

PURCHASING CONTRACTS & FORMS

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**Procedures, Policies, &
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Contact Us

Bid Threshold

Foothill-De Anza Community College District

12345 El Monte Road

Los Altos Hills, CA 94022

[District Phone & Contacts Directory](#)

Departments

[BUSINESS SERVICES](#)

[CHANCELLOR'S](#)

[OFFICE](#)

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Our Colleges

[FOOTHILL COLLEGE](#)

[DE ANZA COLLEGE](#)

[ACADEMIC CALENDAR](#)

[LAST UPDATED 9/28/23](#)

AGREEMENT FOR SERVICES (AFS) INSTRUCTIONS

INSTRUCTIONS

1. The Agreement for Services packet consists of the following components:
 - Instructions
 - Agreement for Services
2. It is the end-users responsibility to do the following **prior** to the contractor providing services:
 - 2.1 Complete all fillable sections of the Agreement for Services and obtain the appropriate signatures
 - 2.2 Obtain a current W-9 and submit to Accounts Payables, even if one was previously provided to ensure no discrepancies with 1099
 - 2.3 Obtain proof of insurance prior to the commencement of work
 - 2.4 Contact Risk Management at risk@fhda.edu regarding all questions related to insurance coverage and/or exception authorization.
3. If this agreement is not bond funded, \$5,000 or less, and payment is a single invoice, you may submit the completed agreement, W-9, and [Payment Authorization Form](#) directly to District Accounts Payable.

- OR -

If you will be paying more than one invoice against the agreement or if the agreement is over \$5,000, submit the complete agreement, W-9, and proof of insurance along with an online Banner requisition to District Purchasing Services. After Purchasing issues the PO, submit the Contractor's invoices to District Accounts Payable and indicate the PO number on each invoice.

END INSTRUCTIONS

AGREEMENT FOR SERVICES

This Agreement entered into as of the District's execution date ("Effective Date"), by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and _____, hereinafter called "Contractor." Each of District and Contractor are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, pursuant to Foothill-De Anza Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage Contractors, including, Independent Contractors, to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, Government Code Section 53060¹ authorizes the engagement of persons to perform special services as contractors; and

WHEREAS, Public Contract Code 20651² requires competitive solicitations for services valued above the bid thresholds for professional services or construction services as updated annually³; and

WHEREAS, Government Code Section 8546.7⁴ provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract; and

WHEREAS, the public interest, convenience, necessity and general welfare will be served by this Agreement.

WHEREAS, it is necessary and desirable that Contractor be engaged by District for the purpose of performing services hereinafter described:

NOW, THEREFORE, the Parties agree as follows:

1. AGREEMENT DOCUMENTS.

The documents forming the entire Agreement between District and Contractor shall consist of the District Standard Instructions & Conditions (SIC's)⁵ and this Agreement including:

- EXHIBIT A – Scope of Services
- EXHIBIT B – Insurance Requirements
- EXHIBIT C – Data Security Standards (if applicable)

In the event of any discrepancies or inconsistencies between the provisions of the SIC's, this Agreement and the Exhibits, the provisions of this Agreement will prevail. Notwithstanding the foregoing, the terms of the Exhibits shall prevail with respect to the specific terms therein.

¹ Gov Code 53060: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=53060&lawCode=GOV

² PCC 20651: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=20651&lawCode=PCC

³ Bid Threshold: <http://purchasing.fhda.edu/bid-threshold/index.html>

⁴ Gov Code 8546.7: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=8546.7&lawCode=GOV

⁵ Standard Instructions and Conditions: <https://purchasing.fhda.edu/procedures-policies-and-laws/index.html>

2. SERVICES TO BE PERFORMED BY CONTRACTOR.

In consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with the terms, conditions and specifications set forth herein and in Exhibit A attached hereto and by this reference made a part hereof. Contractor shall perform all the services described in Exhibit A for the sum of:

Not-to-Exceed \$ _____

3. PAYMENTS.

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit A, District shall make payment to Contractor in the manner specified in Exhibit A, Part II.

4. RELATIONSHIP OF THE PARTIES.

It is understood that this is an Agreement by and between the District and Contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of a Contractor.

5. NON-ASSIGNABILITY.

Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this section automatically shall terminate this Agreement.

6. AGREEMENT TERM and TERMINATION.

6.1. Initial Term. This Agreement shall be in effect from _____ through _____ . The District may terminate this contract at any time for any reason by providing 30 days' notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this section, Contractor shall be paid for all work provided to the date of termination.

6.2. Option to Extend. This Agreement may be renewed for additional time periods as long as the original Agreement Term plus the renewal periods does not exceed five years, provided that both Parties sign the renewal and insurance coverage continues pursuant to the requirements in Exhibit B.

7. HOLD HARMLESS AND INDEMNIFICATION.

7.1. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the District, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) by reason of any failure to withhold and/or pay to the government income and/or employment taxes from earnings under this Agreement as made necessary by Section 530 of the Revenue Act of 1978, including but not limited to the concurrent active or passive negligence of the Contractor or the District, its officers, agents, employees or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the District has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

7.2. The duty of the Contractor to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778.4 of the California Civil Code.

7.3. Contractor's duty to defend shall be triggered by notice to Contractor that District has been served with a summons or complaint, which alleges facts falling within the scope of Contractor's indemnity obligations.

8. INSURANCE.

Contractor agrees to have and maintain the policies set forth in Exhibit B, entitled "Insurance Requirements," which is attached hereto and incorporated herein. Contractor agrees to provide District with a copy of said policies, certificates and/or **endorsements before work commences under this Agreement.**

9. INTELLECTUAL PROPERTY AND DATA SECURITY STANDARDS.

9.1 Contractor shall implement appropriate measures designed to ensure the confidentiality and security of all applicable data on behalf of the District, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action that could result in substantial harm to the District or an individual identified through the data or information in the Contractor's custody, as applicable.

9.2 Data Security Standards: Contractor agrees to comply with the District's Data Security Standards set forth in Exhibit C, which is attached hereto and incorporated herein, in the performance of the services. Contractor further agrees that it shall treat all information received through the performance of this Agreement in strict accordance with the standards. Not Applicable if checked.

10. SOLE PROPERTY OF THE DISTRICT.

Any system or documents developed, produced or provided under this Agreement shall become the sole property of the District. Notwithstanding any other provision herein, any intellectual property discovered or developed by Contractor in the course of performing or otherwise as a result of its work hereunder shall be the sole property of the District.

11. NON-DISCRIMINATION.

11.1 General. No person shall, on the grounds of race, color, national or ethnic origin, religious affiliation or non-affiliation, gender, marital status, sexual orientation, age, physical or mental disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement.

11.2 Employment. Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Contractor's personnel policies shall be made available to District upon request.

12. SUBSTITUTIONS.

If particular people are identified in Exhibit A as working on this Agreement, the Contractor will not assign others to work in their place without written permission from the District representative. Any substitution shall be with a person of commensurate experience and knowledge.

13. EXPENDITURE OF PUBLIC FUNDS.

Contractor agrees to comply with Government Code Section 8546.7 which provides that Agreements involving expenditure of public funds in excess of \$10,000.00 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the Agreement.

14. CONFIDENTIALITY.

In performing its duties hereunder the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 U.S. Code Section 1232g and the Family Education Rights and Privacy Act (FERPA). The Parties agree that such incidental access is not a provision or conveyance or disclosure to Contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.

15. FORCE MAJEURE.

15.1 General. Neither party hereto shall be deemed to be in default of any provision of this Agreement, or for any failure in performance, resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such "force majeure" acts or events shall include, but may not be limited to, acts of God, civil or military authority, civil disturbance, martial disturbance, strikes, war, federally or locally declared public health emergencies or natural disasters including pandemics, plagues, famines, droughts, fires, floods, loss of utility such as electricity or water, other catastrophes, or other "force majeure" events beyond the parties' reasonable control.

15.2 Notification. District shall notify Contractor in writing as soon as District knows, or should reasonably know, that a force majeure event has occurred, thus cancelling the Agreement. District's notification regarding whether a force majeure event has occurred shall be final and binding on the parties.

15.3 Losses. Contractor is not entitled to damages, compensation, or reimbursement from District for losses resulting from any "force majeure" event.

16. HEALTH AND SAFETY REQUIREMENTS.

Contract shall be subject to all District requirements regarding health and safety protocols and must abide by Federal, State, Local government and District's procedures and policies while on District premises.

17. MERGER CLAUSE.

The District SIC's and this Agreement, including Exhibits A and B attached hereto and incorporated herein by reference, constitutes the sole agreement of Parties hereto and correctly states the rights, duties and obligations of each Party as of the document's date. Any prior agreement, promises, negotiations or representations between the Parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the District's authorized officer. In the event of a conflict between the SIC's, the terms, conditions or specifications set forth herein and those in Exhibits A and B attached hereto, the terms, conditions or specifications set forth herein shall prevail.

18. PAYMENT OF PREVAILING WAGES. (if applicable)

Except for agreements for a total of \$1000 or less, if Contractor provides public project services Contractor shall pay all workers on the District project the prevailing wage pursuant to the California Labor Code, Sections 1770 through 1777.7.

19. GOVERNING LAW.

This Agreement must be construed – and its performance enforced – under California Law.

20. JURISDICTION & VENUE.

In the event that suit is brought by either Party to this Agreement, the Parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

Contractor further agrees that in the event of a lawsuit involving this Agreement is filed by District, Contractor will unconditionally accept the jurisdiction of a federal or state court located in Santa Clara County, California.

In Witness Whereof, the Parties have entered into the Agreement on the day and year set forth beneath the respective names below.

| | |
|-----------------------------|---|
| | Foothill-De Anza Community College District |
| "Contractor" | "District" |
| By: | By: |
| <i>Authorized Signature</i> | <i>Authorized Signature</i> |
| Print Name: | Print Name: |
| Title: | Title: |
| E-Mail: | E-Mail: |
| Date: _____ | Date: _____ |

Vice President, Finance/Admin Services Signature:
(Required for agreements > \$5,000)

This Agreement is not valid until signed by both Parties above.

Date* _____
Approved by Board of Trustees if applicable

*Board approval is required prior to commencement of services if total cost exceeds the applicable bid threshold for goods and services as reflected on following Purchasing website link: <http://purchasing.fhda.edu/bid-threshold/index.html>

EXHIBIT A – SERVICES

- I. **Detailed description of services to be performed and work product to be delivered to District by Contractor: (reference and attach additional pages, if necessary)**

- II. **Amount and Method of Payment: (indicate lump sum payment or rate of pay; also include a list of tasks which must be completed prior to each progress payment and show the timeline for progress payments, if applicable)**

- Single payment, upon successful completion of deliverables.
- Multiple payments. Explain how payments will be made (i.e., milestone payments, monthly payments etc.)

In any event, the total payment for services of Contractor shall not exceed \$ _____ and District shall have the right to withhold payment if District determines that the quantity or quality of the work performed is unacceptable.

- III. **Term of the Agreement: The term of this Agreement shall commence on the date specified in Section 6.**

EXHIBIT B – INSURANCE REQUIREMENTS

Contractor shall not commence work under this Agreement until required insurance certificate has been submitted to the requesting Project Manager. Certificates of insurance shall be issued by an insurer with an A M Best rating of A-VII or better, unless otherwise approved by District Risk Manager. Such certificate shall evidence all coverages and limits required by District in this Agreement and shall specify that insurers will give District thirty (30) days prior written notice of non-renewal or cancellation.

1. MINIMUM SCOPE AND LIMIT OF INSURANCE

Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:

- 1.1. Workers' Compensation (statutory limits) and Employers' Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 employee and \$1,000,000 each disease, provided that Contractor has employees as defined by the California Labor Code;
- 1.2. Commercial General Liability insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, sexual assault & molestation, broadform property damage, independent contractors, products and completed operations;
- 1.3. Commercial Automobile Liability insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;
- 1.4. Professional Liability insurance, is required only if checked.
Professional Liability insurance, with limits not less than \$1,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$50,000 each claim.
- 1.5. Cyber Liability insurance, is required only if checked.
Cyber Liability insurance, with limits not less than \$1,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$50,000 each claim.

2. OTHER INSURANCE PROVISIONS

- 2.1. If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this Agreement.
- 2.2. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance.
- 2.3. Maintenance of the required insurance is a material condition of this Agreement and failure to maintain such insurance may, at the District's option, result in a declaration of material breach and suspension of Contractor's further work under this Agreement.

EXHIBIT C – DATA SECURITY STANDARDS

1. Security.

Contractor shall provide District with general system security including: (a) physical security of the hosting location, (b) limiting access to District's stored information to individual Contractor employees directly connected with maintaining the database or the associated application software; (c) plans for managing disaster recovery.

2. Return of Materials.

Upon expiration or termination of this Agreement or the licenses granted hereunder, District shall immediately return to Contractor all Licensed Software/Technology and Documentation provided to District, as well as any and all copies thereof. Contractor agrees to cooperate with District to facilitate the retrieval and download of all District data collected by and stored in the Licensed System. Upon District's receipt of the data, Contractor will certify that all District data has been thoroughly and completely removed from the Licensed System.

3. Ownership of District Data.

District, and/or its suppliers and affiliates, retains all right, title and interest (including, without limitation, all proprietary rights) to District Data and District Applications except for rights granted to Contractor and its affiliates under this Agreement. Except as otherwise provided herein, upon termination or cancellation of this Agreement for any reason, Contractor shall return all District Data to District in an agreed upon format, or destroy, at District's option.

4. Data Security.

Contractor has implemented and shall maintain at least industry acceptable standard systems and procedures to ensure the security, confidentiality and integrity of User Data and to reasonably protect against anticipated threats or hazards to the security or integrity of User Data, and against unauthorized access to, use or disclosure of User Data.

5. Nondisclosure of User Data.

Contractor shall hold all User Data in strict confidence and with the same standard of care it uses to protect its own information of a similar nature and shall not use User Data for any purpose other than to provide the Service or as may be authorized in writing by District. Contractor shall not disclose User Data to any other party except: (a) to Contractor employees, agents, subcontractors and service providers, to whom User Data needs to be disclosed for the purpose of providing the Service; (b) as required by law, or to respond to duly authorized information requests of police and governmental authorities or to comply with any facially valid subpoena or court order; (c) protect the rights or property of Contractor or Contractor customers, including the enforcement of Contractor agreements or policies governing District's use of the Service; or (d) as authorized by District in writing. Contractor shall undertake efforts reasonably calculated to ensure that Contractor employees, agents, and subcontractors with access to User Data are aware of Contractor's obligations under this Agreement and are placed under an obligation of confidentiality with respect thereto.

6. Cooperation with Law Enforcement.

To the extent permitted by law, Contractor reserves the right to involve and cooperate with law enforcement or the appropriate legal authorities in investigations of claims of illegal or unauthorized activity involving the Service or any users thereof, violations of applicable laws, to protect Contractor Systems and Contractor's customers and to respond to any violations of this Agreement. District agrees that Contractor is authorized to monitor communications into, and out of, Contractor Systems to prevent the introduction of viruses or other hostile code, to prevent intrusions, and to otherwise enforce the terms of this Agreement. District further agrees that Contractor may, in its sole discretion, disclose any and all

Agreement for Services – Rev 12/2021

District Data including, without limitation, assigned IP numbers, Service history, and Service use to any law enforcement agent for the purposes specified herein or where Contractor receives a facially valid and lawful search warrant, court order, subpoena or other valid legal order from law enforcement officials, without further consent of District or Users. Notwithstanding the foregoing and to the extent permitted by law and law enforcement, Contractor will make reasonable efforts to notify District when a disclosure of District's Data has or is to be made.

7. Third Party Requests.

If Contractor receives a Third Party Request, Contractor will, unless it is prohibited by law or by the terms of the Third Party Request: (a) promptly notify District of its receipt of a Third Party Request in a manner permitted by law; and (b) comply with District's reasonable requests regarding its efforts to oppose a Third Party Request.

8. Security Breach.

Contractor will notify District of a Security Breach within seven (7) days of Contractor's verification of a Security Breach. The notification shall include, to the extent possible, (a) the identification of each User whose data has been, or is reasonably believed to have been accessed, acquired, used, or disclosed; (b) the nature of the Security Breach; (c) the date of, and the date of discovery of the Security Breach; (d) a brief description of the types of data that were involved; (e) any steps that Users should take to protect themselves from potential harm resulting from the Security Breach; and (f) a brief description of Contractor's efforts to investigate the Security Breach, mitigate harm to Users, and protect against further Security Breaches. In addition, Contractor shall immediately conduct a reasonable investigation of the reasons for and circumstances surrounding such Security Breach; use best efforts and take all necessary actions to prevent, contain, and mitigate the impact of, such Security Breach; collect and preserve all evidence concerning the discovery, cause, vulnerability, remedial actions and impact related to such Security Breach, which shall meet reasonable expectations of forensic admissibility. Any information Contractor provides to District regarding a Security Breach shall be treated as Confidential Information and subject to the requirements of Section 14.

9. Breach Notification.

District agrees that it shall be District's sole responsibility to determine whether a Security Breach is subject to state, federal or national breach notification laws and requires breach notification ("Breach Notification"). In the event that District determines that a Security Breach requires Breach Notification, Contractor agrees that it will reasonably cooperate with District in regards to District's Breach Notification obligations as specified in state, federal or national breach notification laws, including District's investigation, enforcement, monitoring, document preparation, Breach Notification requirements and reporting. District shall be solely responsible for notifying all individuals subject to Breach Notification.

10. Indemnification by Contractor.

Except to the extent arising from the intentional or negligent acts of the District or its officers, employees, subcontractors and agents, Contractor shall, to the extent permitted by law, defend and hold harmless District, against any and all claims, injuries, damages, costs, penalties, actions, losses or suits, including reasonable attorneys' fees, of a third party alleging (a) that District's use of the Services as permitted under this Agreement infringes or misappropriates the intellectual property rights of a third party; or (b) arising out of or based on a Security Breach. If a Security Breach occurs and is found to be the result of Contractor's breach of its duty to employ the Information Security and results in a Breach Notification obligation, subject to the limit stated in Exhibit B – Section 1.5, Contractor will be liable for reasonable associated costs incurred by District in responding to or recovering from said Security Breach.

Foothill-DeAnza Community College District

PURCHASE ORDER NO. _____ CHANGE NO. ____ TO AGREEMENT FOR SERVICES

The Agreement is changed only as described herein. All other terms, conditions, and prices remain unchanged. This Change to the Agreement is entered this _____ day of _____, 20_____, by and between the District, a community college district of the State of California, hereinafter called "District" and _____ hereinafter called "Contractor."

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. Services to be performed by Contractor.

(check one box)

No Change

In consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with the terms, conditions and specifications set forth in the original Agreement and in the revised Exhibit "A" which is attached hereto and by this reference made a part hereof.

2. Payments.

(check one box)

No Change

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in revised Exhibit "A", District shall make payment to contractor in the manner specified in revised Exhibit "A" which is attached hereto and by this reference made a

3. Contract Term.

(check one box)

No Change

This Agreement shall be in effect only as specified in the revised Exhibit "A" which is attached hereto and by this reference made a part hereof. The District may terminate this contract at any time for any reason by providing 30 days notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Contractor shall be paid for all work provided to the date of termination.

4. Other changes.

(check one box)

No Change

Describe applicable changes in detail:

Revised EXHIBIT "A"

Contract between Foothill-DeAnza Community College District and

_____ ,
hereinafter called "Contractor".

I. Detailed description of the change in services to be performed or work product to be delivered to District by Contractor: (Reference and attach additional pages, if necessary.)

II. Amount and Method of Payment: (Indicate the additional fee for increased scope of work or the deductive amount for decreased scope of work.)

ORIGINAL AGREEMENT AMOUNT \$ _____

PLUS OR MINUS AMOUNT OF ALL PREVIOUS CHANGES \$ _____

PLUS OR MINUS AMOUNT FOR THIS CHANGE \$ _____

NEW TOTAL AGREEMENT AMOUNT \$ _____

In any event, the total payment for services of contractor shall not exceed \$ _____ and District shall have the right to withhold payment if District determines that the quantity or quality of the work performed is unacceptable.

III. Term of the contract: The term of the contract shall commence on the date specified in the first paragraph of the contract, and shall continue until _____ 20_____.

Authorized Contractor Signature

Date

Title

Print Name

Contractor's Company Name

Contractor's Email

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

By

Title

Print Name

This contract is not valid until signed by both parties above.

Date Approved by Board of Trustees if the total cost including change exceeds \$20,000

INDEPENDENT CONTRACTOR AGREEMENT (ICA)

INSTRUCTIONS

1. WHEN TO USE THE ICA:

This ICA is designed to be used for individuals and/or sole proprietorship type entities.

2. USER RESPONSIBILITIES:

It is the end-user's responsibility to do the following **prior** to the Contractor providing services:

2.1. Complete all sections of the ICA and obtain the appropriate signatures.

2.2. All blank spaces must be completed. Pay particular attention to sections:

- 2.1 – Agreement Term
- 2.2 – Services and Deliverables
- 2.3 – Fees for Services

2.3. Obtain a current W-9 and submit to Accounts Payable for Contractor Vendor # setup, even if one was previously provided to ensure no discrepancies with 1099.

2.4. Obtain proof of insurance prior to the commencement of work for on-site services.

2.5. Contact Risk Management at risk@fhda.edu for questions related to insurance coverage and/or exception authorization.

3. CONTRACT THRESHOLDS AND PROCESSING:

3.1. For ICA's ≤ \$5,000, with one invoice payment (**No PO is required**):

- And services are **not funded** by Measure C (bond measure),
- Submit the completed ICA, W-9, [Payment Authorization form](#) (formerly Invoice for Services Rendered Form) and the Contractor's invoice directly to Accounts Payable for processing.

3.2. For ICA's ≤ \$5,000, with multiple invoice payments (**PO is required**), or

For ICA's >\$5,000 (**PO required**)

- Submit a purchase requisition, and upload the completed ICA, W-9, and proof of insurance for on-site services.
- After Purchasing issues the PO, submit all Contractor invoices to Accounts Payable and indicate the PO number on each invoice.

END

Foothill - De Anza Community College District
12345 EL Monte Rd., Los Altos Hills, CA 94022

INDEPENDENT CONTRACTOR AGREEMENT

(Do not use this form for public works, repairs or maintenance to a building)

This Agreement entered into this _____ day of _____, 2____ is made between the Foothill-De Anza Community College District, hereinafter referred to as the "DISTRICT," and the following named independent contractor; hereinafter referred to as the "CONTRACTOR." Each of DISTRICT and CONTRACTOR are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

Whereas, Government Code Section 53060¹ authorizes the engagement of persons to perform special services as independent contractors; and

Whereas, Public Contract Code 20651² requires competitive solicitations for services valued above the bid thresholds for professional services or construction services as updated annually³; and

Whereas, Government Code Section 8546.7⁴ provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract; and

Whereas, the public interest, convenience, necessity and general welfare will be served by this Agreement.

This Agreement is not valid and services shall not commence until signed by authorized District officials in accordance with the delegated authority levels as approved by the Board of Trustees⁵, and/or until the Board of Trustees approves the Agreement.

1. CONTRACTOR INFORMATION:

1.1. General Information:

| | |
|---|---|
| Company Name: _____ | Contact Name: _____ |
| Street Address: _____ | Phone: _____ |
| City, State, Zip: _____ | Email: _____ <i>(Required)</i> |
| Social Security #: _____ <i>(last four digits)</i> | Fed. Tax ID #: _____ <i>(provide W-9 for initial setup only)</i> |
| Business License: _____ | |

¹ Gov Code 53060 Link: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=53060&lawCode=GOV

² PCC 20651 Link: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=20651&lawCode=PCC

³ Bid Threshold: <http://purchasing.fnda.edu/bid-threshold/index.html>

⁴ Gov Code 8546.7: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=8546.7&lawCode=GOV

⁵ Authorization Link: <http://purchasing.fnda.edu/downloads/Delegation%20of%20Authority%20-%20Resolution%202018-15-20.pdf>

1.2. Is Contractor a Current or Former Employee of the DISTRICT or STRS/PERS Retiree?

1.2.1. Are you a current employee of the DISTRICT?

Yes* No

**stop, current employees cannot work as a contractor.*

Note: Per IRS standards, it is unlikely that an individual would qualify as both an employee and contractor of an organization. The IRS highly scrutinizes situations where a W-2 and a 1099 are issued for the same individual, especially in the same calendar year.

1.2.2. Are you a former employee of the DISTRICT or STRS/PERS retiree?⁶

Yes* No

**a yes response will trigger Accounts Payable to report payment to Payroll Services.*

Note: CalSTRS⁷ publishes the post-retirement earning limit which is adjusted annually. Any money received above the specified amount will be deducted from the employee's/retiree's annual CalSTRS retirement benefit.

If yes, date last worked: _____

If yes, specify last work location: _____

Work Assignment: _____

1.3. Is Contractor Related to DISTRICT Employee?

1.3.1. Are you related to any employee(s) in the DISTRICT?

Yes No

If yes, please identify the individual(s). _____

If yes, have you confirmed there is no actual or perceived conflict of interest pursuant to Board Policy 4115 Nepotism? _____

2. CONTRACTOR SERVICES, FEE, AND CONTRACT STARTING AND ENDING DATES:

2.1. Agreement Term:

Starting Date: _____ Ending Date: _____

Note: It is not permissible to split the contracted services into two or more contracts within one fiscal year for the purpose of avoiding the requirement for Board of Trustees approval or bid limits.

2.2. Services and Deliverables:

Description of services and deliverables to be provided by CONTRACTOR (if available, refer to and attach CONTRACTOR'S signed proposal or quotation)

2.3 Fee for Services:

CONTRACTOR Fee for Services

(Indicate a fixed fee to be paid for all of the described services or indicate hourly or other periodic billing rate(s). If travel or other expenses will be reimbursed they should conform to Administrative Procedure 3152.)

\$ _____

CONTRACTOR Reimbursable Expenses, if any

(state maximum reimbursement amount to be paid in addition to contract fee shown above)

\$ _____

Not-to-Exceed Amount

TOTAL COST OF THIS INDEPENDENT CONTRACT NOT-TO-EXCEED AMOUNT (including CONTRACTOR travel or other expense reimbursements)

NOTE: Board approval is required prior to commencement of work if total cost exceeds the bidding threshold for goods and services as reflected on following Purchasing website link:

<http://purchasing.fhda.edu/bid-threshold/index.html>

\$ _____

⁶ Ed Code: 22461: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=22461&lawCode=EDC

⁷ CalSTRS: <https://www.calstrs.com/general-information/postretirement-earnings-limit-and-separation-service-effect-retirement-benefit>

3. DISTRICT OBLIGATIONS OTHER THAN PAYMENT, IF ANY:

4. PAYMENT TERMS:

Unless other payment terms are specified in this section, payment terms are Net 30 days computed from the date a correct and proper invoice is received by the District and prepared in accordance with the terms of the Agreement.

5. STANDARD TERMS AND CONDITIONS:

- 5.1. CONTRACTOR is solely responsible for the content and sequence of the work. DISTRICT will not provide any training or instruction to CONTRACTOR or its employees.
- 5.2. Confidentiality: In performing its duties hereunder the CONTRACTOR may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The Parties agree that such incidental access is not a provision or conveyance or disclosure to CONTRACTOR of student record information in violation of section 1232g or of any similar state law. CONTRACTOR agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.
- 5.3. CONTRACTOR shall indemnify, defend and hold the DISTRICT, its Board of Trustees, officers, agents and employees harmless from any and all claims, damages, losses, causes of action and demands, including reasonable attorney fees and costs, incurred in connection with or in any manner arising out of CONTRACTOR'S performance of the work contemplated by this Agreement. Acceptance of this Agreement constitutes that the CONTRACTOR is not covered under the DISTRICT'S general liability insurance, employee benefits or workers' compensation. It further establishes that the CONTRACTOR shall be fully responsible for such coverage. CONTRACTOR shall maintain in force, throughout the term of this Agreement, insurance as follows:
 - 5.3.1. Workers' Compensation (statutory limits) and Employers' Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 employee and \$1,000,000 each disease, provided that CONTRACTOR has employees as defined by the California Labor Code;
 - 5.3.2. Commercial General Liability insurance, with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations;
 - 5.3.3. Commercial Automobile Liability insurance, with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;
 - 5.3.4. Professional Liability insurance (check when applicable), with limits not less than \$1,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$25,000 each claim.
 - 5.3.5. If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this agreement.

- 5.3.6. General and Automobile liability policies **shall include as Additional Insureds, the DISTRICT, its officers, agents, employees and servants**, and shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance.
- 5.3.7. CONTRACTOR shall not commence work under this Agreement until required insurance has been obtained.
- 5.4. The CONTRACTOR shall assume all expenses incurred in connection with the performance of this Agreement and the DISTRICT shall not be responsible for payment of any other expenses. The payment terms specified in Section 4 above, unless otherwise indicated and agreed to in writing by the CONTRACTOR and the DISTRICT, shall be the only obligation of the DISTRICT. While engaged in carrying out and complying with any of the terms and conditions of this Agreement, CONTRACTOR is not entitled to any right or privilege applicable to an officer or employee of the DISTRICT or of the State of California.
- 5.5. Any system or documents developed, produced or provided under this Agreement, including any intellectual property discovered or developed by CONTRACTOR in the course of performing or otherwise as a result of its work, shall become the sole property of the DISTRICT unless explicitly stated otherwise in this Agreement.
- 5.6. The Contractor agrees to provide the District with properly completed Internal Revenue Service (IRS) Form W-9 before the District will process payment.
- 5.6.1. Payments to the CONTRACTOR pursuant to this Agreement will be reported to Federal and State taxing authorities as required. An IRS form 1099 will be provided to the CONTRACTOR at the end of the calendar year.
- 5.6.2. CONTRACTOR is independently responsible for the payment of all applicable taxes. DISTRICT will not withhold any sums from compensation payable to CONTRACTOR, except as provided below for Out-of-State Contractors.
- 5.6.3. **Out-of-State Contractors** (check when applicable). If the Contractor has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Contractor acknowledges and agrees that the Contractor is required to provide the District with properly completed California Franchise Tax Board forms related to nonresident withholding of California source income. Also see link: <https://www.ftb.ca.gov/individuals/wsc/summary-nonresident-withholding-process.shtml>
- Payments of \$1,500 or more, in a calendar year, made to California non-residents, including corporations, limited liability companies, non-profits, and partnerships that do not have a permanent place of business in the State of California, are subject to seven percent (7%) state income tax withholding pursuant to the California Revenue and Taxation Code, Section 18662⁸. The District is obligated to abide by California Franchise Tax Board (FTB) withholding requirements, unless the District receives authorization for a waiver or a reduced withholding rate from the Franchise Tax Board.
- 5.7. This Agreement constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations of warranties, expressed or implied, not specified in this Agreement. This Agreement applies only to the current proposal as attached. Modification or termination of this Agreement requires mutual agreement by both Parties.
- 5.8. The DISTRICT may terminate this Agreement at any time for any reason by providing 30 days notice to CONTRACTOR. Termination to be effective on the date specified in the notice. In the event of termination, CONTRACTOR shall be paid for all work provided to the date of termination.

⁸ RTC Link: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=18662&lawCode=RTC
Independent Contractor Agreement (Rev 12/04/19)

5.9. The Parties to the Agreement, under penalty of perjury, hereby certify that all of the above items and attachments are to the best of their knowledge true and correct statements.

In Witness Whereof, the Parties have entered into the Agreement on the day and year set forth beneath the respective names below:

CONTRACTOR

AGREEMENT OF CONTRACTOR: By signing below, I agree to perform the services described above for the payment indicated. I understand that while performing Agreement services I am not an employee of the Foothill-De Anza Community College District because:

1. *I follow an independent trade or profession,*
2. *I will not be subject to control and direction as to the details and means for accomplishing the anticipated result of my service, and*
3. *I customarily perform work that is outside the usual course of the DISTRICT'S business, and operate my business offering the same type of services to other clients as being offered to the District.*

By: _____
Authorized Signature

Print Name: _____

Title: _____

E-Mail: _____

**Foothill – De Anza Community College District
 “DISTRICT”**

This document certifies that I and my assigns have reviewed the appropriate legal and procedural guidelines pertinent to determination of independent contractor status, have analyzed their application to the services being provided, and have concluded that the hiring of the subject individual to perform the functions described does indeed constitute correct and legal independent contractor status as summarized below:

1. *Contractor follows an independent trade or profession,*
2. *Contractor is free from the control and direction of the District in connection with the performance of the work, both under the contract for the performance of such and in fact,*
3. *Contractor performs work that is outside the usual course of the DISTRICT'S business.*

By: _____
Authorized Signature

Print Name: _____

Title: _____

Date: _____

Vice President, Finance/Admin Services
 Signature: (Required for agreements > \$5,000)

 Date* _____

Approved by Board of Trustees if applicable
**Board approval is required prior to commencement of work if total cost exceeds the bidding threshold for goods and services as reflected on following Purchasing website link:
<http://purchasing.fhda.edu/bid-threshold/index.html>*

| | | |
|--|------------------|------------------|
| FOR CAMPUS USE ONLY: | | |
| Originator: _____ | Date: _____ | Extension: _____ |
| FOAP: I _____ | F _____ | O _____ |
| A _____ | P _____ | |
| Campus Finance/Fiscal Services Authorization: | | |
| Name: _____ | Signature: _____ | |
| Title: _____ | Date: _____ | |

Foothill - De Anza Community College District

**AMENDMENT NO. _____ TO INDEPENDENT CONTRACTOR AGREEMENT
(PURCHASE ORDER NO. _____)**

This Amendment to the Agreement between the Foothill-De Anza Community College District, hereinafter referred to as the "District", and the following named independent contractor (hereinafter "Contractor"), is entered into as of the District's execution date ("Effective Date").

| | | | |
|--|-------|----------------|-------|
| Company Name: | _____ | Contact Name: | _____ |
| Street Address: | _____ | Phone: | _____ |
| City, Zip: | _____ | Email (Req'd): | _____ |
| Social Security #: (last four digits) | _____ | Fed. Tax ID #: | _____ |
| Business License: | _____ | | |

1. CONTRACTOR SERVICES, FEE, AND CONTRACT STARTING AND ENDING DATES:

1.1. Description of additional services and deliverables to be provided by Contractor (refer to and attach Contractor's signed proposal or quotation for this change):

1.2. Contractor Fee for Services (Compensation Changes):

| | \$ Amount | * Compensation Type/comments |
|---|------------------|-------------------------------------|
| Original amount of Agreement: | \$ _____ | _____ |
| Amount for previous changes (net change) | \$ _____ | _____ |
| Add/Deduct amount for Services this change | \$ _____ | _____ |
| Reimbursable Expense this change (if any) | \$ _____ | Not-to-Exceed Amount |
| REVISED ICA TOTAL | \$ _____ | Not-to-Exceed Amount |

**(Indicate a fixed fee to be paid for all of the described services or indicate hourly or other periodic billing rate(s) plus a maximum total dollar cost, i.e. the "not to exceed" amount, to be paid to the contractor. If travel or other expenses will be reimbursed they should conform to the same guidelines as Board Policy AP7400.)*

2. AGREEMENT TERM:

Contract Starting Date: _____ Contract Ending Date: _____

3. DISTRICT OBLIGATIONS OTHER THAN PAYMENT, IF ANY:

4. PAYMENT TERMS:

Unless other payment terms are specified in this section, District agrees to pay Contractor within thirty (30) days computed either from the date of delivery and acceptance of the contract services or from the date of receipt of correct and proper invoices prepared in accordance with the terms of the contract, whichever date is later.

Foothill - De Anza Community College District

5. EFFECT OF CHANGE ORDER:

Except as expressly provided herein, all other provisions of the Agreement shall remain in full force and effect. If a conflict or inconsistency arises between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall prevail.

In Witness Whereof, the Parties have entered into the Agreement on the day and year set forth beneath the respective names below:

CONTRACTOR

AGREEMENT OF CONTRACTOR: By signing below, I agree to perform the services described above for the payment indicated. I understand that while performing Agreement services I am not an employee of the Foothill-De Anza Community College District because:

- 1. I follow an independent trade or profession,*
- 2. I will not be subject to control and direction as to the details and means for accomplishing the anticipated result of my service, and*
- 3. I customarily perform work that is outside the usual course of the DISTRICT'S business, and operate my business offering the same type of services to other clients as being offered to the District.*

By: _____
Authorized Signature

Title: _____

Print Name: _____

E-Mail: _____

Date: _____

Company Name: _____

Foothill – De Anza Community College District “DISTRICT”

This document certifies that I and my assigns have reviewed the appropriate legal and procedural guidelines pertinent to determination of independent contractor status, have analyzed their application to the services being provided, and have concluded that the hiring of the subject individual to perform the functions described does indeed constitute correct and legal independent contractor status as summarized below:

- 1. Contractor follows an independent trade or profession,*
- 2. Contractor is free from the control and direction of the District in connection with the performance of the work, both under the contract for the performance of such and in fact,*
- 3. Contractor performs work that is outside the usual course of the DISTRICT'S business.*

By: _____
Authorized Signature

Title: _____

Print Name: _____

Date: _____

Address: _____

Date* _____

Approved by Board of Trustees if applicable

**Board approval is required prior to commencement of work if total cost exceeds the bidding threshold for goods and services as reflected on following Purchasing website link:*

<http://purchasing.fhda.edu/bid-threshold/index.html>

| FOR CAMPUS USE ONLY: | | |
|--|------------------|------------------|
| Originator: _____ | Date: _____ | Extension: _____ |
| FOAP: I _____ F _____ O _____ A _____ P _____ | | |
| Campus Finance/Fiscal Services Authorization: | | |
| Name: _____ | Signature: _____ | |
| Title: _____ | Date: _____ | |

LIMITED ENGAGEMENT AGREEMENT (LEA)

INSTRUCTIONS

1. WHEN TO USE THE LIMITED ENGAGEMENT AGREEMENT:

This LEA is designed to be used for individuals when engaging in selected low risk services under \$5,000 and single payment.

Do not use the LEA for services in which the individual will be supervised; directed in regards to means, manner, and method; or controlled. Do not use the LEA for model services – Contact Human Resources.

2. USER RESPONSIBILITIES:

It is the end-user's responsibility to do the following **prior** to the Contractor providing services:

2.1. Complete all sections of the LEA and obtain the appropriate signatures.

2.2. All blank spaces must be completed. Pay particular attention to sections:

- 1 – Services
- 2 – Contractor Information
 - 2.2 – STRS/PERS Retiree information
- 3 – Contractor Services, Fees

2.3. Obtain a current W-9 and submit to Accounts Payable for Contractor Vendor # setup.

3. CONTRACT THRESHOLDS AND PROCESSING:

3.1. For LEA's ≤ \$5,000, with one invoice payment (**No PO is required**):

- Submit the completed LEA, W-9, [Payment Authorization form](#) (formerly Invoice for Services Rendered Form) and the Contractor's invoice directly to Accounts Payable for processing.

END



Limited Engagement Agreement (\$5,000 or less)

(to be used only for limited engagement services in the amount of \$5,000 or less)

Notice: This Agreement is designed for the limited engagement of speakers, guest lecturers, performers or other individuals at nominal expense to the Foothill – De Anza Community College District. It is to be used for engagements of an academic nature and a short duration presented to the District. It is not designed for engagements that create the significant potential for risk of physical injury or property damage (including by way of example, but without limitation, engagements involving intense physical activity or the use of heavy or dangerous equipment, installations, scaffolding, suspended lights or cameras, or the erection of sculpture or sets). Because there are no insurance requirements in this Agreement, Risk Management must be consulted before this Agreement is used for any engagement other than those for which it is specifically designed as described above.

This Limited Engagement Agreement (“Agreement”) for personal services of an individual is entered into as of the District’s execution date (the “Effective Date”) by and between **Foothill – De Anza Community College District** (hereinafter “DISTRICT”), a California community college district and political subdivision of the State of California, and the **following named independent contractor** (herein after “CONTRACTOR”). Each of DISTRICT and CONTRACTOR are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

For good and valuable consideration, the Parties agree as follows:

1. SERVICES:

The District hereby engages and retains CONTRACTOR to provide the following services:

artist musician/performer speaker/lecturer workshop leader trainer other participant

Name of Event:* _____ (the “Engagement”)

Term (Start/End Dates): _____

Location: _____

Topic / Length: _____

**for additional scope of services attach Exhibit A, if applicable*

2. CONTRACTOR INFORMATION:

2.1. General Information:

Company Name: _____ Contact Name: _____

Street Address: _____ Phone: _____

City, State, Zip: _____ Email: _____
(Required)

Social Security #: _____ Fed. Tax ID #: _____
(last four digits) (provide W-9)

2.2. Is Contractor a Current or Former Employee of the DISTRICT or STRS/PERS Retiree?

2.2.1. Are you a current employee of the DISTRICT? Yes* No

Note: Per IRS standards, it is unlikely that an individual would qualify as both an employee and contractor of an organization. The IRS highly scrutinizes situations where a W-2 and a 1099 are issued for the same individual, especially in the same calendar year.

**stop, current employees cannot work as a contractor.*

2.2.2. Are you a former employee of the DISTRICT or STRS/PERS retiree?¹ Yes* No

Note: CalSTRS² publishes the post-retirement earning limit which is adjusted annually. Any money received above the specified amount will be deducted from the employee’s/retiree’s annual CalSTRS retirement benefit.

**a yes response will trigger Accounts Payable to report payment to Payroll Services.*

¹ Ed Code: 22461: http://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=22461&lawCode=EDC

² CalSTRS: <https://www.calstrs.com/general-information/postretirement-earnings-limit-and-separation-service-effect-retirement-benefit>

If yes, date last worked: _____

If yes, specify last work location: _____

Work Assignment: _____

2.3. Is Contractor Related to DISTRICT Employee?

2.3.1. Are you related to any employee(s) in the DISTRICT? Yes No

If yes, please identify the individual(s). _____

If yes, have you confirmed there is no actual or perceived conflict of interest pursuant to Board Policy 4115 Nepotism? _____

3. CONTRACTOR SERVICES, FEE:

3.1. Fee for Services:

CONTRACTOR shall be paid an amount not to exceed the fee (the "Fee") specified below for the full and satisfactory completion of services, payable within thirty (30) days from the date a correct and proper invoice is received by the District. The District shall not be obligated to reimburse CONTRACTOR for any additional expenses or costs that are not included in the fee.

If either Party is unable to perform any of its obligations under this Agreement due to events beyond its reasonable control, the District shall have the right to reschedule the Engagement at a time mutually agreed upon with the CONTRACTOR. In such event, the CONTRACTOR will not be compensated for any expenses incurred for the original date of the Engagement and only be compensated for the new rescheduled Engagement.

(Indicate a fixed fee to be paid for all of the described services, inclusive of any travel or other expenses that will be reimbursed in accordance with Administrative Procedure 3152.)

\$ _____

4. TERMINATION:

This contract may be terminated at no cost to either Party upon _____ DAYS ADVANCE WRITTEN NOTICE, or 30 days if no days are indicated.

5. ASSIGNMENT:

CONTRACTOR acknowledges that the services to be rendered under the terms hereof, are of a special and unique character and may not be assigned.

6. VENUE AND EQUIPMENT:

The Engagement will be on the District's premises (the "Facility"). The DISTRICT will provide all sound and lighting equipment, as well as all house support personnel, including, but not limited to all ushers, and security personnel deemed necessary by the DISTRICT. CONTRACTOR may supply any additional equipment, including, but not limited to audio visual aids, demonstration media, fixtures, stage sets, musical instruments, and devices. The Speaker shall use the Facility for the sole purpose described herein and for no other purpose.

7. REPRODUCTION OF ENGAGEMENT:

The District shall be entitled to record, reproduce or transmit audio and/or visual of the Engagement, provided that the District's use of such the recording(s), reproduction(s) or transmittal(s) shall be restricted to activities permitted by law to non-profit educational institutions.

8. MARKETING:

Any and all publicity be means of poster, newspaper, radio, television or otherwise, shall be at the sole discretion and control of the DISTRICT, and is subject to any rules and regulations formulated by the DISTRICT. The Speaker shall not produce or post any advertisements on or off DISTRICT property or in any electronic media without the prior written consent of the DISTRICT. The Speaker shall not make use of the DISTRICT's name, logo, symbol or image without prior written approval of the DISTRICT.

9. ASSUMPTION OF RISK AND RELEASE OF LIABILITY:

- 9.1. Assumption of Risk. CONTRACTOR understands, acknowledges and accepts all known and unknown risks associated with performance of the Services. CONTRACTOR agrees to assume any and all risks associated with said services.
- 9.2. Release from Liability. CONTRACTOR releases, discharges, waives and relinquishes forevermore all claims or actions against the DISTRICT, its trustees, officers, agents, contractors, employees, and volunteers for bodily injury, emotional distress, property damage, wrongful death, and/or any other harm or damage arising out of performance of the Services.

10. INDEMNIFICATION:

- 10.1. CONTRACTOR agrees to indemnify and hold harmless the DISTRICT and its trustees, officers, agents and employees against any and all claims for loss, injury or damage to persons or property arising out of the performance of this Agreement including, without limitation, claims of libel, slander, invasion of privacy, right of publicity, defamation, trademark infringement, and copyright infringement. The acceptance of said services and duties by DISTRICT shall not operate as a waiver of such right of indemnification.

11. DISABLED ACCESSIBILITY:

- 11.1. CONTRACTOR warrants that he/she complies with California and federal disabilities laws and regulations. CONTRACTOR hereby warrants that the products or services to be provided under this Agreement comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S. C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. CONTRACTOR agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. CONTRACTOR further agrees to indemnify and hold harmless the DISTRICT from any claims arising out of its failure to comply with aforesaid requirements. Failure to comply with these requirements shall constitute a material breach and be grounds for termination of this Agreement.

12. CHOICE OF LAW:

The law governing this Agreement shall be that of the State of California, and venue shall be in the County of Santa Clara.

13. AMENDMENTS:

This Agreement contains the entire agreement between the Parties hereto. Both Parties shall make any changes to the terms and conditions of this Agreement in the form of a written amendment.

14. INDEPENDENT CONTRACTOR:

It is understood and agreed that CONTRACTOR, in the performance of the work and services agreed to under this Agreement, shall act as and be an independent contractor and not an agent or employee of the DISTRICT, and as an independent contractor, CONTRACTOR shall obtain no rights to retirement benefits or other benefits which accrue to DISTRICT employees.

15. W-9:

CONTRACTOR acknowledges and agrees that it must submit a completed "Request for Taxpayer identification Number and Certification" (Form W-9) with this signed Agreement and that the DISTRICT will report payment information to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by CONTRACTOR. No payments will be processed unless a completed W-9 Form is on file with the DISTRICT. The W-9 Form may be obtained at the following link: <https://www.irs.gov/>

Out-of-State Contractors (check when applicable). If the Contractor has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Contractor acknowledges and agrees that the Contractor is required to provide the District with properly completed California Franchise Tax Board forms related to nonresident withholding of California source income. Also see link: <https://www.ftb.ca.gov/forms/misc/1017.html> and <https://www.ftb.ca.gov/pay/withholding/withholding-on-payments-to-nonresidents.html>.

Payments of \$1,500 or more, in a calendar year, made to California non-residents, including corporations, limited liability companies, non-profits, and partnerships that do not have a permanent place of business in the State of California, are

subject to seven percent (7%) state income tax withholding pursuant to the California Revenue and Taxation Code, Section 18662³. The District is obligated to abide by California Franchise Tax Board (FTB) withholding requirements, unless the District receives authorization for a waiver or a reduced withholding rate from the Franchise Tax Board.

16. ENTIRE AGREEMENT:

This Agreement constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations of warranties, expressed or implied, not specified in this Agreement. This Agreement applies only to the current proposal as attached. Modification or termination of this Agreement requires mutual agreement by both Parties.

In Witness Whereof, the Parties have entered into the Agreement on the day and year set forth beneath the respective names below:

CONTRACTOR

AGREEMENT OF CONTRACTOR: By signing below, I agree to perform the services described above for the payment indicated. I understand that while performing Agreement services I am not an employee of the Foothill-De Anza Community College District because:

1. *I follow an independent trade or profession,*
2. *I will not be subject to control and direction as to the details and means for accomplishing the anticipated result of my service, and*
3. *I customarily perform work that is outside the usual course of the DISTRICT'S business, and operate my business offering the same type of services to other clients as being offered to the District.*

**Foothill – De Anza Community College District
“DISTRICT”**

This document certifies that I and my assigns have reviewed the appropriate legal and procedural guidelines pertinent to determination of independent contractor status, have analyzed their application to the services being provided, and have concluded that the hiring of the subject individual to perform the functions described does indeed constitute correct and legal independent contractor status as summarized below:

1. *Contractor follows an independent trade or profession,*
2. *Contractor is free from the control and direction of the District in connection with the performance of the work, both under the contract for the performance of such and in fact,*
3. *Contractor performs work that is outside the usual course of the DISTRICT'S business.*

By: _____
Authorized Signature

Print Name: _____

Title: _____

Date: _____

By: _____
Authorized Signature

Print Name: _____

Title: _____

Date: _____

FOR CAMPUS USE ONLY:

Originator: _____ Date: _____ Extension: _____

FOAP: I _____ F _____ O _____ A _____ P _____

Campus Finance/Fiscal Services Authorization:

Name: _____ Signature: _____

Title: _____ Date: _____

³ RTC Link: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=18662&lawCode=RTC
Limited Engagement Agreement (Rev.12.04.19)

EXHIBIT A - Scope of Services

Detailed scope of services if needed.

**Public Works, Repairs and Maintenance
AGREEMENT BETWEEN OWNER AND CONTRACTOR**

This Agreement between Owner and Contractor (“Agreement”) is entered into effective as of this _____ day of _____, 20____, between the Foothill-De Anza Community College District, Santa Clara County, California (“Owner”) and _____ (“Contractor”), with Owner and Contractor each a “Party” and together the “Parties” to this Agreement.

Contractor and Owner agree as follows:

1. SCOPE OF WORK

1.1. Contractor agrees to furnish all labor, equipment and materials, including tools, implements, and appliances and to perform all the work in a good and skillful manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers, all in strict compliance with the Agreement Documents, required for construction of the Project (the “Project”) located on the _____ campus(es), described as:

1.2. Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, transportation, freight, licenses, fees, permits, and other facilities and services necessary for the proper execution and completion of the Project. The Contractor shall at all times enforce strict discipline and good order among Contractor’s employees and subcontractors and shall not employ on the Project anyone not skilled in the task assigned. Any employee of Contractor, or employee of Contractor’s subcontractors or suppliers, that Owner deems not skilled for the task assigned shall, upon Owner’s request, be dismissed from the site.

2. EXAMINATION OF SITE

Contractor is familiar with the scope of work or has visited the site and investigated the conditions on, in, out and about the site, including any buildings, which might affect the progress of the Project and is satisfied as to those conditions. No claim for money or time will be allowed as to such matters.

3. AGREEMENT DOCUMENTS

The Contractor and Owner agree that the Agreement Documents are composed of this Agreement, required insurance certificates, additional insured endorsement and declarations page, any required bonds, any Invitation to Bid or Request for Quotation (including all Exhibits), Purchase Order, and any specifications and plans. If there are specifications and plans, the specifications and plans are intended to cooperate, so that any work exhibited in the plans and not mentioned in the specifications, or vice versa, is to be executed the same as if both mentioned in the specifications and set forth in the plans to the true intent and meaning of the said plans and specifications, when taken together. The Agreement Documents are complementary, and each obligation of the Contractor, subcontractors, and material or equipment suppliers in any one shall be binding as if specified in all. Where requirements of the Agreement Documents exceed those of the applicable building codes and ordinances, the Agreement Documents shall govern. Contractor shall comply with all applicable Federal, State and local laws. When applicable, the work shall constitute a “work of improvement” under Civil Code section 8050 and Public Contract Code section 7107.

4. COMPLETION DEADLINE

4.1. The Contractor shall commence performance of the work in accordance with the schedule as stated below.

Schedule Option A - DEFINED PROJECT:

Approximate Start: _____
Approximate End: _____ or within _____ calendar days.

Schedule Option B – ON-GOING/ANNUAL AGREEMENTS:

Start: _____
End: _____

4.2. The actual dates of work will be mutually agreed upon between the Owner and the Contractor after receipt of an authorized Purchase Order issued by the Owner. All work shall be coordinated with:

District Representative: _____ E-Mail: _____
Telephone Number: _____

5. AGREEMENT SUM

The Total Agreement Sum below is a not to exceed total amount payable by Owner to Contractor for the performance of work under the Agreement Documents unless modified in writing through a properly executed change order:

| | | |
|--|----|-------|
| Project Cost | \$ | _____ |
| Cost for Bonds per Section 19 <i>(Required. if project cost is \$22,500-\$60,000)</i> | \$ | _____ |
| Total Agreement Sum | \$ | _____ |

Payments will only be made for actual goods or services ordered and received, and approved by the Owner.

6. CONTRACTOR’S LICENSE, REGISTRATION AND COMPLIANCE MONITORING

In accordance with section 3300 of the Public Contract Code, Contractor has a Class “_____” license which shall be maintained in good standing for the duration of Contractor’s work on the Project. Public works projects, as defined by Labor Code, shall be subject to compliance monitoring, reporting, and enforcement by the Department of Industrial Relations. The Owner shall not enter into any contract without proof of the Contractor’s current registration to perform public work under Labor Code section 1725.5.

6.1. DIR registration provides for an exemption for Small Projects as defined below.

6.1.1. Contractors who work exclusively on small projects are not required to register as public works contractors, or file electronic certified payroll reports for those projects. The small project exemption is applied based on the amount of the entire project, not a contractor’s subcontracted amount of the project. Small project exemptions apply for all public works projects that do not exceed:

- \$25,000 for new construction, alteration, installation, demolition or repair
- \$15,000 for maintenance

6.1.2. On projects that qualify for the small project exemption, contractors are still required to pay prevailing wages, maintain certified payroll records on a continuous basis, and provide those records to the Labor Commissioner’s Office upon request.

6.2. The Contractor shall not enter into any subcontract without proof of the subcontractor’s current registration to perform public work under Labor Code section 1725.5. A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7,

Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work unless the Small Project Exemption is applicable.

7. PAYMENT

Option A (single payment upon completion):

If work is completed within 30 days a lump sum payment will be made following final completion by the Contractor and acceptance of the project by the Owner.

Option B (monthly progress payments and retention):

In accordance with Public Contract Code §9203 and §20104.50 where a Public Project or Repair is \$5,000 or more, Progress Payments less 5% retention will be paid within thirty (30) days after the Owner's receipt of a proper Application for Progress Payment.

- 7.1. Owner will pay Contractor on a monthly basis for services satisfactorily performed after receipt of properly documented and submitted applications for payment. Contractor shall submit to Owner an itemized application for payment on a monthly basis indicating the amount of work completed since commencement of the work or since the last progress payment, as applicable. These applications shall be supported by evidence which is required by this Agreement and such other documentation as the Owner may require. If required, the Contractor shall certify that the work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to submit a detailed schedule of values upon request of the Owner and in such detail and form as the Owner shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments. For each accepted payment, five percent (5%) shall be withheld and retained by the Owner, and the remainder shall be paid to the Contractor.
- 7.2. If the Contractor becomes liable under this section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments and/or progress payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this section has been finally determined. If the retained percentages and withheld progress payments appear insufficient to discharge all liabilities of the Contractor incurred under this section, the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.
- 7.3. Owner may withhold payment and/or retention, in whole or in part, to such extent as may be necessary to protect the Owner from loss because of any of the following: (a) Defective work not remedied; (b) Stop Payment Notices filed, unless the Contractor at its sole expense provides a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, which protects the Owner against such claim and which Owner chooses to accept; (c) Liquidated damages assessed against the Contractor; (d) Reasonable doubt that the work can be completed for the unpaid balance of any Agreement Sum or by the Completion Deadline; (e) Damage to the Owner, another contractor, or subcontractor; (f) Unsatisfactory prosecution of the work by the Contractor; (g) Failure to store and properly secure materials; (h) Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Agreement Documents; (i) Failure of the Contractor to maintain record drawings; (j) Erroneous estimates by the Contractor of the value of the work performed, or other false statements in an Application for Payment; (k) Unauthorized deviations from the Agreement Documents; (l) Failure of the Contractor to prosecute the work in a timely manner in compliance with established progress schedules and Completion Deadline; (m) Subsequently discovered evidence or observations nullifying the whole or part of a previously issued payment; (n) Failure to pay subcontractors or suppliers; or (o) Breach of any provision of the Agreement Documents.
- 7.3.1. Owner's failure to withhold any of these sums from a progress payment and/or retention shall not constitute a waiver of Owner's right to such sums.
- 7.3.2. Any stop payment notice release bond shall be executed by a California admitted, fiscally solvent surety, completely unaffiliated with and separate from the surety on the payment and performance bonds, that does not have any assets pooled with the payment and performance bond sureties. Owner reserves the right to approve or reject the surety insurer selected by Contractor and to require Contractor to obtain a bond from a surety insurer satisfactory to the Owner.

- 7.4. If the Owner accepts any work or makes any release of progress payments or retention under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.
- 7.5. In accordance with Public Contract Code section 22300, the Owner will permit the substitution of securities for any retention monies withheld by the Owner to ensure performance under the Agreement.
 - 7.5.1. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such retention monies to the Contractor. Upon completion of the work, the securities shall be returned to the Contractor if Owner has no basis to withhold under the Agreement Documents. Securities eligible for investment under this section shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this section shall be substantially similar to the form set forth in Public Contract Code section 22300.

8. CHANGE ORDERS

- 8.1. The Contractor and the Owner agree that changes in the Project to be done under this Agreement and any plans and specifications shall become effective only when written in the form of a change order approved and signed by the Owner and the Contractor. It is specifically agreed that the Owner shall have the right to request any alterations, deviations, reductions, or additions to the Project and the amount of the cost thereof shall be added to or deducted from the amount of the Agreement Sum by fair and reasonable valuations. Contractor also agrees to provide the Owner with all information requested to substantiate the cost of the change order and to inform the Owner whether the work will be done by the Contractor or by a subcontractor.
- 8.2. This Agreement shall be deemed to be completed when the Project is finished in accordance with this Agreement, and any original plans and specifications as amended by such changes.
- 8.3. The Contractor shall submit with the proposed change order its request for time extension (if any), and include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the Project. The time extension shall be agreed to by the Parties and memorialized by a written change order prior to initiation of the work contemplated by the change order.

9. DISPUTES

If a dispute arises between the Owner and the Contractor as to an interpretation of any of the specifications or Agreement Documents or as to the quality or sufficiency of materials or workmanship, the decision of the Owner shall for the time being prevail, and the Contractor, without delaying the job, shall proceed as directed by the Owner without prejudice to a final determination of the dispute.

10. CLAIMS LESS THAN \$375,000

- 10.1. Notwithstanding any other provision herein, claims of \$375,000 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contract Code sections 20104, et seq., including claim, response, informal meet and confer conference, non-binding mediation if a claim of over \$100,000 remains in dispute after the meet and confer conference, and Government Code claim. "Claim" for this purpose means a separate demand by the Contractor for a time extension, payment of money or damages arising from work done by or on behalf of the Contractor pursuant to this Agreement, for which payment is expressly provided, or the Contractor is otherwise entitled to, or an amount the payment of which is disputed by the Owner.
- 10.2. The Contractor shall submit its claim of \$375,000 or less to the Owner in writing before payment is made. The Owner shall respond within the time provided by statute. If the Contractor disagrees with the response or the Owner fails to respond within the time permitted, the Contractor shall notify the Owner of the disagreement in writing within fifteen (15) days from the date of the response or expiration of the time permitted to respond and demand a meet-and-confer conference. The Owner shall schedule a meet-and-confer conference within thirty (30) days of the demand. If not resolved at the meet-and-confer conference,

then the claim shall be submitted to mediation. If the dispute is not resolved at mediation, the Contractor may initiate a civil action as set forth in Public Contract Code section 20104 et seq.

11. TERMINATION

- 11.1. If the Contractor should be adjudged bankrupt, or if the Contractor should make a general assignment for the benefit of Contractor's creditors, or if a receiver should be appointed on account of Contractor's insolvency, or if Contractor or any of Contractor's subcontractors should violate any of the provisions of the Agreement, or if Contractor should refuse or fail to supply enough properly skilled workmen or proper materials, or if Contractor violates Labor Code section 1771.1(a), subject to the provisions of Labor Code section 1771.1(f), or should fail to make prompt payment to subcontractors or for material or labor, or disregard laws, ordinances or the instructions of the Owner, then the Owner may serve written notice upon the Contractor and its surety of its intention to terminate the Agreement. Unless, within five (5) days after the serving of such notice, such violations shall cease and satisfactory arrangements for corrections thereof be made, the Agreement shall, upon the expiration of said five (5) days, at the Owner's option, terminate.
- 11.2. In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the contractor, and the surety shall have the right to take over and perform the Agreement; provided, however, that if the surety, within ten (10) days after the serving upon it of Notice of Termination, does not give the Owner written notice of its intention to take over and perform the Agreement or does not commence performance within ten (10) days from the date of the serving of such notice; the Owner may then take over the Project and prosecute the same to completion by any method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any excess cost occasioned the Owner thereby. In such event, the Owner may without liability for so doing, take possession of and utilize in completing the Project, such materials, appliances and other property belonging to the Contractor as may be on the site of the Project and necessary therefore. In such case the Contractor shall not be entitled to receive payment until the Project is finished. If the Agreement Sum exceeds the expense of finishing the Project, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed the Agreement Sum, the Contractor shall pay the difference to the Owner.
- 11.3. The Owner may, at any time, terminate the Agreement for the Owner's convenience and without cause. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall (1) cease operations as directed by the Owner in the notice; (2) take actions necessary, or that the Owner may direct, for the protection and preservation of the work; and (3) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination.

12. SUBCONTRACTORS

If Contractor shall subcontract any part of the work, Contractor shall be fully responsible to Owner for acts or omissions of Contractor's subcontractors. Pursuant to Public Contract Code section 6109, no contractor may perform work on a public works project with a subcontractor who is ineligible to perform work on the project pursuant to California Labor Code sections 1777.1 or 1777.7.

13. PREVAILING WAGES

- 13.1. The Project is a public work, the Work shall be performed as a public work and under California Labor Section Code 1770 et seq., the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed, for each craft, classification or type of worker needed to execute this Agreement. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are available or on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until

the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement. Contractor shall post on site all required job site notices as prescribed by regulation.

- 13.2. The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- 13.3. Pursuant to Labor Code section 1776, the Contractor and each subcontractor shall keep or cause to be kept an accurate record for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Agreement or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Standards Enforcement of the State Department of Industrial Relations. Contractor and subcontractors shall comply with Labor Code section 1776.

14. WORKING HOURS

- 14.1. In accordance with the provisions of California Labor Code sections 1810 to 1815, inclusive, the time of service of any worker employed by the Contractor or a subcontractor doing or contracting to do any part of the work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay.
- 14.2. The Contractor and every subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Law Enforcement.
- 14.3. The Contractor shall as a penalty to the Owner forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

15. APPRENTICES

- 15.1. The Contractor agrees to comply with Chapter 1, Part 7, Division 2, sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journey person (unless an exemption is granted in accordance with section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, sexual orientation, national origin, ancestry or color.
- 15.2. Only apprentices as defined in Labor Code section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

16. FORCE MAJEURE

The Parties shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss or shortage of transportation facilities,

lockout, or commandeering of materials, products, plants, or facilities by the Government when satisfactory evidence thereof is presented to the other Party, provided that it is satisfactorily established that the nonperformance is not due to the fault or neglect of the Party not performing. A Contractor seeking an extension of time as a result of the above enumerated acts, must present the request for an extension of time to the Owner within fifteen (15) calendar days of the commencement of the act causing the delay. A Contractor's failure to provide notice of a request for an extension of time may result in denial of the request.

17. INDEMNIFICATION

- 17.1. To the fullest extent permitted by law, the Contractor and its Subcontractors shall defend and indemnify the Owner, any construction manager, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, volunteers, Governing Boards, members of the Governing Boards, and directors ("Indemnitees"), from and against claims, actions, liability, damages, losses, and expenses (including, but not limited to, attorneys' fees and costs including fees of consultants) alleged by third parties arising out of or resulting from performance of the work by Contractor or its subcontractors; or any act, omission, negligence, or willful misconduct of the Contractor or its subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Contractor, its subcontractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a Party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a Party, person, or entity described in this paragraph. This obligation to defend and indemnify includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Contractor and its subcontractors shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Contractor and its subcontractors.
- 17.2. In the event Contractor brings hazardous materials on the Project site, the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of Contractor's generation of hazardous material on the Project site. In addition, the Contractor shall defend and indemnify the Indemnitees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Project Site, except to the extent the claims, damages, losses, costs, or expenses were caused by Indemnitees' active negligence, sole negligence or willful misconduct.

18. INSURANCE

- 18.1. **Comprehensive General Liability and Automobile Insurance.** Without limiting Contractor's indemnification, it is agreed that Contractor shall maintain in force at all time during the performance of this Agreement the policies of insurance hereinafter described. Contractor shall secure and maintain in force during the term of this Agreement a comprehensive general liability and automobile policy utilizing an occurrence policy form, with combined single limits of One Million dollars (\$1,000,000) per occurrence with a Two Million dollars (\$2,000,000) annual aggregate limit. Property damage limits shall be One Million dollars (\$1,000,000) per loss. The Owner shall be named as an additional insured on the policies by endorsements that shall be attached to the Agreement as proof of insurance.
- 18.1.1. Written notification by the carrier to the Owner at least thirty (30) days prior to cancellation, failure to renew, or other termination, is required.
- 18.1.2. Certificates of insurance shall clearly state that the Owner is named as an additional insured under the General Liability and Automobile Liability policies described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner and any other insurance carried by the Owner with respect to the matters covered by such policy be excess and non-contributing.

18.1.3. Contractor will, at its own expense, maintain coverage in conformance with above requirements. As required, certificates of insurance evidencing the existence of coverage shall be filed with the Owner prior to commencement of work.

18.2. **Workers' Compensation.** Contractor shall maintain a policy of workers' compensation insurance as required by Labor Code section 3200 et seq. during the duration of this Agreement. A certificate evidencing this coverage shall be filed with the Owner prior to the commencement of work under this Agreement. Notification by the carrier to the Owner at least thirty (30) days prior to cancellation, failure to renew, or other termination, is required.

19. PERFORMANCE AND PAYMENT BONDS

19.1. Check below:

Bonds are not applicable (Not required for Projects \$22,500 or less, inclusive of all changes)
If change orders increase the value of the Agreement over \$25,000 then Owner reserves the right to request bonds for Change Order(s) that materially changes the size and/or scope of work. The Contractor shall be required to provide payment bonds pursuant to California Civil Code sections 9550-9566.

Bonds are applicable (Required for Projects or regular and routine maintenance service greater than \$22,500)*
Prior to commencing any portion of the work, the Contractor shall apply for and furnish Owner separate payment and performance bonds for its portion of the work which shall cover 100% faithful performance (during construction and one year after completion, and during any warranty or guarantee period) of and payment of all obligations arising under this Agreement and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California and shall be executed on Owner issued forms. Samples of the bonds are included as:

- EXHIBIT A (Payment Bond), and
- EXHIBIT B (Performance Bond).

*EXCEPTION: If the Agreement is established as a blanket in excess of \$22,500 for the provision of as-needed maintenance/repair services (not a defined and specific project), bonds are not required. During the term of the Agreement, in the event, a specific project is required that exceeds the \$22,500 threshold, then Contractor will notify Owner and submit the required bonds.

19.2. To the extent, if any, that the Agreement Sum is increased in accordance with this Agreement, the Contractor shall cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of this Agreement (including, without limitation, an increase in the Agreement Sum, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bond, the Owner may terminate this Agreement for cause.

19.3. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

20. WARRANTY PERIOD

The Contractor shall promptly correct any work found not to be in conformance with the Agreement Documents for one year after Owner's written acceptance of the work. Contractor shall correct the work promptly, and passage of the applicable warranty period shall not release Contractor from its obligation to correct the work if Owner provided the written notice within the applicable warranty period. Contractor's obligation to correct the warranty item continues until the correction is made. After the correction is made to Owner's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected work. The obligations under this section shall survive acceptance of the work under the Agreement and termination of the Agreement.

21. ASSIGNMENT OF ANTI-TRUST CLAIM

Pursuant to Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the owner all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the Parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with section 4550) of Division 5 of Title 1 of the Government Code, the assignor may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

22. SUBSTITUTIONS

No substitutions of materials from those specified in this Agreement or the specifications shall be made without prior written approval of the Owner.

23. SUPERVISION AND OWNER ACCESS

Contractor shall provide competent supervision of all persons on the job site. Contractor shall allow Owner access to the site at all times.

24. DRUG FREE WORKPLACE

Contractor certifies that Contractor will comply with the requirements of California's Drug-Free Workplace Act of 1990, California Government Code Section 8350 et seq., and will provide a drug-free workplace by taking the following actions: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of the prohibition. (b) Establishing a drug-free awareness program to inform employees about all of the following: (1) the dangers of drug abuse in the workplace; (2) Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon employees for drug abuse violations. (c) Requiring that each employee engaged in the performance of the Agreement be given a copy of Contractor's drug-free policy statement and agree to abide by the terms of Contractor's statement as a condition of employment on the Agreement.

25. CLEAN UP, PROTECTION OF WORK AND PROPERTY

Contractor shall maintain site in a clean and safe condition, including the daily removal of flammable material. The Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchpersons for protection of workers and the public, and shall post danger signs warnings against hazards created by such features in the course of construction. In an emergency affecting life and safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from Owner, is permitted to act at its discretion to prevent such threatened loss or injury. If at Project completion, the site is not clean, Owner may clean the site and deduct the cost from the Agreement Sum.

26. OCCUPANCY

Owner reserves the right to occupy buildings at any time before formal acceptance of Agreement completion and such occupancy shall not constitute final acceptance or approval of any part of the work covered by this Agreement, nor shall such occupancy extend the date specified for substantial completion of work.

27. ANTI-DISCRIMINATION

It is the policy of the Owner that there shall be no discrimination against any of Contractor's prospective or active employees engaged in the Project because of race, color, ancestry, national origin, sexual orientation, sex or

religious creed. Therefore, the Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act. In addition, the Contractor agrees to require like compliance by all subcontractors employed on the Project by Contractor.

28. INDEPENDENT CONTRACTOR

While engaged in carrying out the terms and conditions of the Agreement Documents, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venturer of the Owner.

29. TESTING AND INSPECTIONS REQUIREMENTS (Apply only when checked)

If checked, see EXHIBIT C for detailed requirements.

30. OTHER SPECIAL CONSTRUCTION REQUIREMENTS (Apply only when checked)

If checked, see EXHIBIT D for detailed requirements.

31. MISCELLANEOUS PROVISIONS

- 31.1. **DISCOVERY OF HAZARDOUS MATERIALS.** In the event the Contractor encounters or suspects the presence on the site of material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), Lead (Pb), or any other material defined as being hazardous by California Health and Safety Code section 25249.5, which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Owner in writing, whether or not such material was generated by the Contractor or the Owner. The work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), Lead (Pb) or other hazardous material, and has not been rendered harmless. The work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), Lead (Pb) or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Contractor.
- 31.2. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
- 31.3. **Assignment.** The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on any payment bond, the surety on any performance bond and the Owner.
- 31.4. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Contractor and Owner and their respective successors and assigns.
- 31.5. **Severability; Governing Law; Choice of Forum.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Agreement shall be governed by the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Santa Clara, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by Owner.
- 31.6. **Amendments.** The terms of the Agreement Documents shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both Parties.
- 31.7. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the company or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice. Owner shall, at Contractor's cost, timely notify Contractor of Owner's receipt of any third-party claims relating to this Agreement pursuant to Public Contract Code section 9201.
- 31.8. **Entire Agreement.** The Agreement Documents constitute the entire agreement between the Parties relating to the Project, and supersedes any prior or contemporaneous agreement between the parties, oral or written, including the Owner's award of the Project to Contractor, unless such agreement is expressly incorporated

herein. The Owner makes no representations or warranties, express or implied, not specified in the Agreement. The Agreement is intended as the complete and exclusive statement of the parties' agreement pursuant to Code of Civil Procedure section 1856. Contractor, by the execution of this Agreement, acknowledges that Contractor has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

31.9. Execution of Other Documents. The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

31.10. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

31.11. Exhibits. The following Exhibits are included and hereby incorporated into this agreement:

- EXHIBIT A – Payment Bond
- EXHIBIT B – Performance Bond
- EXHIBIT C – Testing and Inspections
- EXHIBIT D – Special Construction Provisions

.....
 The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective Parties, and by their signatures to bind the respective Parties to this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Owner and the Contractor as of the date set forth above.

Foothill-De Anza Community College District
“Owner”

“Contractor”

By: _____
Authorized Signature – Purchasing Services
 Print Name: _____
 Date: _____

Signature: _____
 Print Name: _____
 Title: _____
 Date: _____
 Email: _____
 California Contractor’s License# _____
 • Expiration Date: _____
 • DIR Registration #: _____

This Agreement is not valid until signed by both Parties above.

| | | |
|--|------------------|-------------------------|
| FOR CAMPUS USE ONLY: | | |
| Originator: _____ | Date: _____ | Extension: _____ |
| FOAP: I _____ | F _____ | O _____ A _____ P _____ |
| Campus Finance/Fiscal Services Authorization: | | |
| Name: _____ | Signature: _____ | |
| Title: _____ | Date: _____ | |

**EXHIBIT A - PAYMENT BOND
(Labor and Material)**

KNOW ALL PERSONS BY THESE PRESENTS:

That WHEREAS, Foothill-De Anza Community College District (the "Owner" of the public works project described below) and _____, hereinafter designated as the "Principal," have entered into an Agreement for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to construct:

(DESCRIPTION AND LOCATION OF PROJECT)

Which said Agreement dated _____, _____, and all of the Agreement Documents are hereby referred to and made a part hereof; and

WHEREAS, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by whom the Agreement is awarded to secure the claims arising under said agreement.

NOW, THEREFORE, THESE PRESENTS WITNESSETH:

That the said Principal and the undersigned _____ ("Surety") are held and firmly bound unto all laborers, material men, and other persons, and bound for all amounts due, referred to in Civil Code section 9554, subdivision (b), in the sum of _____ Dollars (\$ _____) which sum well and truly be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the said Principal or any of its subcontractors, or the heirs, executors, administrators, successors, or assigns of any, all, or either of them, shall fail to pay any of the persons named in Civil Code section 9100, or any of the amounts due, as specified in Civil Code section 9554, subdivision (b), that said Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay costs and reasonable attorney's fees to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

And the said Surety, for value received, thereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of said Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety this _____ day of _____, _____.

| | | |
|-----------------------------|--------------------------------|----------------------------|
| <i>Affix Corporate Seal</i> | Principal Business Address: | |
| | | <i>Principal Signature</i> |
| | | Name: |
| | | Title: |
| | | Date: |

| | | |
|-----------------------------|--------------|--|
| <i>Affix Corporate Seal</i> | Surety Name: | |
| | | <i>Attorney-in-Fact Signature for Surety</i> |
| | | Name: |
| | | Telephone: |
| | | Date: |

Attach Attorney-in-Fact Certificate

EXHIBIT B – PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that we,

_____ as Principal and
_____ as Surety, are held and firmly bound unto the Foothill-De Anza Community College District, in the County of Santa Clara, State of California, hereinafter called the "Owner", in the sum of _____ Dollars (\$ _____) for the payment of which sum well and truly made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, to the Owner for the full performance of a certain Agreement with the Owner, the terms of which are incorporated herein by reference, dated _____, 20____, for construction of:

(DESCRIPTION AND LOCATION OF PROJECT)

The condition of this obligation is such that, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Agreement during the original term of said Agreement and any extensions thereof that may be granted by the Owner, with or without notice to the Surety, and for the period of time specified in the Agreement after completion for correction of faulty or improper materials and workmanship and during the life of any guaranty or warranty required under the Agreement, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreement of any and all duly authorized modifications of said Agreement that may hereafter be made, then this obligation is to be void, otherwise to remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the Work to be performed thereunder or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement, or to the Work, or to the specifications.

No further agreement between Surety and Owner shall be required as a prerequisite to the Surety performing its obligations under this bond.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals this _____ day of _____, _____ hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

| | | |
|-----------------------------|--------------------------------|----------------------------|
| <i>Affix Corporate Seal</i> | Principal Business Address: | |
| | | <i>Principal Signature</i> |
| | | Name: |
| | | Title: |
| | | Date: |

| | | |
|--|--------------|--|
| <i>Affix Corporate Seal</i> | Surety Name: | |
| | | <i>Attorney-in-Fact Signature for Surety</i> |
| Name: | | |
| Telephone: | | |
| Date: | | |
| <i>Attach Attorney-in-Fact Certificate</i> | | |

Sample

EXHIBIT C - TESTING AND INSPECTIONS

THE FOLLOWING TERMS AND CONDITIONS FORM A PART OF THIS AGREEMENT WHEN CHECKED:

1. TESTS AND INSPECTIONS.

Tests, inspections, and approvals of portions of the work required by the Agreement Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

2. INDEPENDENT TESTING LABORATORY.

The Owner will select and pay an independent testing laboratory to conduct all tests and inspections, including shipping or transportation costs or expenses (mileage and hours). Selection of the materials required to be tested shall be made by the laboratory or the Owner's representative and not by the Contractor. However, if Contractor requests that the Owner use a different testing laboratory and Owner chooses to approve such request, Contractor shall pay any additional shipping or transportation costs or expenses (mileage and hours). If Owner pays such additional costs or expenses instead of Contractor, then Owner may invoice such costs or expenses to the Contractor or withhold such costs or expenses from progress payments and/or retention.

3. ADVANCE NOTICE TO INSPECTOR OF RECORD.

The Contractor shall notify the Inspector of Record a sufficient time in advance of its readiness for required observation or inspection so that the Inspector of Record may arrange for same. The Contractor shall notify the Inspector of Record a sufficient time in advance of the manufacture of material to be supplied under the Agreement Documents which must, by terms of the Agreement Documents, be tested in order that the Inspector of Record may arrange for the testing of the material at the source of supply.

4. TESTING OFF-SITE.

Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector of Record that such testing and inspection will not be required, shall not be incorporated in the work.

5. ADDITIONAL TESTING OR INSPECTION.

If the Inspector of Record, the Architect, the Owner, or public authority having jurisdiction determines that portions of the work require additional testing, inspection, or approval not included, the Inspector of Record will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs for basic testing at the District's selected Independent Inspection Laboratory, except as provided for in sections 2, 6, and 7 where the Contractor shall pay for those testing, inspections or approvals.

6. COSTS FOR RETESTING.

If such procedures for testing, inspection, or approval under the previous sections reveal failure of the portions of the work to comply with requirements established by the Agreement Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and, among other remedies, can be withheld from progress payments and/or retention.

7. COSTS FOR PREMATURE TEST.

In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice can among other remedies, be withheld from progress payments and/or retention.

8. TESTS OR INSPECTIONS NOT TO DELAY WORK.

Tests or inspections conducted pursuant to the Agreement Documents shall be made promptly to avoid unreasonable delay in the work.

EXHIBIT D – SPECIAL CONSTRUCTION PROVISIONS

SPECIAL CONSTRUCTION PROVISIONS – Apply only when checked.

1. **TRENCHES OR EXCAVATIONS GREATER THAN FOUR FEET BELOW THE SURFACE.**

- 1.1. Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:
- 1.2. The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, if any:
- 1.3. Material that the Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code section 25117, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.
- 1.4. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.
- 1.5. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement Documents.
- 1.6. The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Agreement Documents.
- 1.7. In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from the Completion Deadline provided for by the Agreement Documents, but shall proceed with all work to be performed under the Agreement Documents. The Contractor shall retain any and all rights provided either by the Agreement Documents or by law which pertain to the resolution of disputes and protests between the contracting Parties.

2. **EXISTING UTILITY LINES; REMOVAL, RELOCATION.**

Pursuant to Government Code section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the site at the time of commencement of construction under this Agreement with respect to any such utility facilities which are not identified in this Agreement, the plans and specifications. The Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.

3. **STORM WATER DISCHARGE PERMIT.**

4. **ROOFING CERTIFICATION.**

Requirement pursuant to California Public Contract Code sections 3000 - 3010. For all projects that include a scope of work that meets the definition of a "roof project", the District shall require the contractor, and its listed roofing subcontractor, to disclose financial relationships by signing and submitting certifications as set forth in Public Contract Code section 3006(b) prior to award of the contract. The awarding contractor shall also be responsible for obtaining certification of its roofing manufacturer(s), and roofing vendor(s) used in the course of construction.

California Public Contract Code section 3000 defines a “roof project” as a project for the replacement or repair of a roof of a public facility, except that “roof project” does not include a project for the repair of 25 percent or less of the roof or a repair project that has a total cost of twenty-one thousand dollars (\$21,000) or less, or for emergency repair work pursuant to Public Contract Code section 20654. Disclosure of a financial relationship in which that person or entity is a stockholder of a corporation of which the stock is listed for sale to the general public on a national securities exchange and registered with the United States Securities and Exchange Commission, if the person or entity holds less than 10 percent of the outstanding stock entitled to vote at the annual meeting of the corporation, is not required. A materials manufacturer, contractor, or vendor who knowingly provides false information or fails to disclose a financial relationship pursuant to this section shall be liable to the District for any costs to the District that are reasonably attributable to excess or unnecessary costs, when compared to competing bids, incurred by the District as a result of the undisclosed financial relationship.

5. __ DIVISION OF STATE ARCHITECT (DSA) OVERSIGHT.

Public Works, Repairs and Maintenance
CHANGE NO. __ TO AGREEMENT BETWEEN OWNER AND
CONTRACTOR

The Agreement is changed only as described herein. All other terms, conditions, and prices remain unchanged. This Change to the Agreement is made this ____ day of _____, 20____, by and between Foothill De Anza Community College District, hereinafter called "Owner" and _____ hereinafter called "Contractor" with Owner and Contractor each a "Party" and together the "Parties" to this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. Services to be performed by Contractor.

(check one box)

No Change

In consideration of the payments hereinafter set forth, Contractor shall perform services for Owner in accordance with the terms, conditions and specifications set forth in the original Agreement and in the revised Exhibit "A" which is attached hereto and by this reference made a part hereof.

2. Payments.

(check one box)

No Change

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in revised Exhibit "A", Owner shall make payment to contractor in the manner specified in revised Exhibit "A" which is attached hereto and by this reference made a part hereof.

3. Contract Term.

(check one box)

No Change

This Agreement shall be in effect only as specified in the revised Exhibit "A" which is attached hereto and by this reference made a part hereof. The Owner may terminate this contract at any time for any reason by providing 30 days notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Contractor shall be paid for all work provided to the date of termination.

4. Other changes.

(check one box)

No Change

Describe applicable changes in detail:

Purchase Order _____

Revised EXHIBIT "A"

Contract between Foothill-De Anza Community College District (Owner) and _____, hereinafter called "Contractor".

I. Detailed description of the change in services to be performed or work product to be delivered to District by Contractor: (Reference and attach additional pages, if necessary.)

II. Amount and Method of Payment: (Indicate the additional fee for increased scope of work or the deductive amount for decreased scope of work; including the cost of payment bonds if applicable.)

\$ _____ ORIGINAL AGREEMENT AMOUNT
\$ _____ AMOUNT OF ALL PREVIOUS CHANGES
\$ _____ AMOUNT FOR THIS CHANGE
\$ _____ NEW TOTAL AGREEMENT AMOUNT

In any event, the total payment for services of Contractor shall not exceed \$_____ and Owner shall have the right to withhold payment if Owner determines that the quantity or quality of the work performed is unacceptable in accordance with the Agreement. If change orders increase the value of the Agreement over \$25,000 then the Contractor shall be required to provide payment bonds pursuant to California Civil Code sections 9550-9566.

III. Term of the contract: The term of the contract shall continue until _____ 20_____.

The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective Parties, and by their signatures to bind the respective Parties to this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Owner and the Contractor as of the date set forth above.

Foothill-De Anza Community College District
“Owner”

“Contractor”

By:

Signature:

_____ *Authorized Signature – Purchasing Services*

Print
 Name:
 Date:

Print
 Name:
 Title:

California Contractor’s License# _____

- Expiration Date: _____
- DIR Registration #: _____

This Agreement is not valid until signed by both Parties above.

| | | |
|--|------------------|------------------|
| FOR CAMPUS USE ONLY: | | |
| Originator: _____ | Date: _____ | Extension: _____ |
| FOAP: I _____ F _____ O _____ A _____ P _____ | | |
| Campus Finance/Fiscal Services Authorization: | | |
| Name: _____ | Signature: _____ | |
| Title: _____ | Date: _____ | |

Foothill-De Anza Community College District

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
(Agreements Less than \$350,000)**

This agreement shall be used for professional services when the scope of services includes *pre-design, programming, special and conceptual studies, planning, and/or assessment work*. Pursuant to Civil Code Section 2782.8 a design professional is defined as an architect, landscape architect, engineer, or land surveyor.

This Agreement entered this _____ day of _____, 2____, by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and _____ hereinafter called "Design Professional." Each of District and Design Professional are sometimes hereinafter referred to as a "Party" and collectively as the "Parties".

WITNESSETH

WHEREAS, pursuant to Foothill-De Anza Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage contractors to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, it is necessary and desirable that a Design Professional be engaged by District for the purpose of performing services hereinafter described:

NOW, THEREFORE, IT IS HEREBY AGREED by the Parties as follows:

1. Services to be performed by Design Professional. In consideration of the payments hereinafter set forth, Design Professional shall perform services for District in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A" attached hereto and by this reference made a part hereof. Design Professional shall perform all the services described in Exhibit A for the sum not to exceed \$_____.
2. Payments. In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", District shall make payment to Design Professional in the manner specified in Exhibit "A."
3. Relationship of the Parties. It is understood that this is an Agreement by and between contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Design Professional.
4. Non-Assignability. Design Professional shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this section automatically shall terminate this Agreement.
5. Contract Term. This Agreement shall be in effect from _____ through _____. The District may terminate this contract at any time for any reason by providing 30 days notice to Design Professional. Termination to be effective on the date specified in the notice. In the event of termination under this section, Design Professional shall be paid for all work provided to the date of termination.
6. Indemnification
 - 6.1. Design Professional's Indemnity of District.
 - 6.1.1. To the extent that claims are made against the District which arise out of, pertain to or relate to negligence, recklessness or willful misconduct of the Design Professional, Design

Foothill-De Anza Community College District

Professional shall defend, hold harmless and indemnify District and its employees, officers, Trustees, agents and representatives against such claims. Provided, however, in no event shall the cost to defend such claims charged to the Design Professional exceed the Design Professional's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants in such action is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other Parties regarding unpaid defense costs.

- 6.1.2. The types of claims included within Design Professional's above-stated indemnity obligation include (i) injury or death of Design Professional's or the Design Professional's Design Consultants' employees arising out of this Agreement; (ii) injury or death of persons or damage to property, including the removal or replacement of any in-place work during or after project completion; (iii) other costs or charges, to the extent the liabilities, damages and losses are caused by willful misconduct, recklessness, or negligence of the Design Professional or Consultant of the Design Professional, and (iv) shall include, subject to the proviso in subsection 6.1.1 above, attorneys fees and costs incurred by the District.
- 6.1.3. Design Professional's indemnity obligation as stated herein shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable statute of limitations.
- 6.1.4. This indemnity agreement shall not be construed to limit the enforceability of other contractual provisions between the District and the Design Professional requiring cooperation with the public agency regarding any claim by a construction contractor.
- 6.1.5. It is the intent of the District that the Design Professional's indemnity obligation set forth above shall be in accordance with California Civil Code Sections 2778 and 2782.8 and shall be a Type II (comparative/proportionate) agreement and not a Type I agreement, which would otherwise shift all indemnity obligations to the Design Professional.
- 6.2. Design Professional Bound to Arbitration by Other Claims. In the event of any claim, arbitration demand filed on behalf of the prime Design Professional or any Design Professional sub-consultants in which design deficiencies or errors, or Design Professional contract administration deficiencies are alleged as a basis for said claim, Design Professional agrees to participate as a party in any such arbitration or state court litigation, and shall further be bound as a party to any arbitration set forth or required under California Public Contract Code § 20104, et seq.
- 6.3. District's Indemnity of Design Professional. The District shall indemnify and hold harmless the Design Professional, its employees and consultants from all claims arising of bodily injury (including death) and physical damage (other than to the project itself and property covered by insurance), but only to the extent that they arise out of the willful acts, omissions or other conduct of the District, and/or the negligence of the District.
7. Insurance. Insurance requirements are attached as Exhibit "B."
8. Non-Discrimination.
 - 8.1. General. No person shall, on the grounds of race, color, national or ethnic origin, religious affiliation or non-affiliation, gender, marital status, sexual orientation, age, physical or mental disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement.
 - 8.2. Employment. Design Professional shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Design Professional's personnel policies shall be made available to District upon request.

Foothill-De Anza Community College District

9. Substitutions: If particular people are identified in Exhibit “A” as working on this contract, the Design Professional will not assign others to work in their place without written permission from the District Purchasing Agent. Any substitution shall be with a person of commensurate experience and knowledge.
10. Sole Property of the District: Any system or documents developed, produced or provided under this contract shall become the sole property of the District. Notwithstanding any other provision herein, any intellectual property discovered or developed by Design Professional in the course of performing or otherwise as a result of its work hereunder shall be the sole property of the District.
11. Contract Renewal. This Agreement may be renewed for additional time periods as long as the original contract term plus the renewal periods does not exceed five years, provided that both Parties sign the renewal, insurance coverage pursuant to Section 7 is still in effect, and the cost of the terms combined will not exceed (a) \$350,000.00.
12. Expenditure Of Public Funds. Design Professional agrees to comply with Government Code Section 8546.7 which provides that the contracting Parties for any contract involving expenditure of public funds in excess of \$10,000.00 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.
13. Confidentiality. In performing its duties hereunder the Design Professional may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC Section 1232(g). The Parties agree that such incidental access is not a provision or conveyance or disclosure to Design Professional of student record information in violation of Section 1232(g) or of any similar state law. Design Professional agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.
14. Merger Clause. This Agreement, including Exhibit “A” attached hereto and incorporated herein by reference, constitutes the sole agreement of Parties hereto and correctly states the rights, duties and obligations of each Party as of the document’s date. Any prior agreement, promises, negotiations or representations between the Parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the District Purchasing Agent. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit “A” attached hereto, the terms, conditions or specifications set forth herein shall prevail.

Foothill-De Anza Community College District

WITNESS THE EXECUTION HEREOF on the day and year written below.

| | |
|--|--|
| <hr/> <p>“Design Professional”</p> <p>By: _____ <i>Authorized Signature</i></p> <p>Title: _____</p> <p>Print Name: _____</p> <p>Date: _____</p> <p>Address: _____</p> <p>Email: _____</p> <p>Design Professional’s Tax I.D. Number: _____</p> | <p>Foothill-De Anza Community College District “District”</p> <p>By: _____ <i>Authorized Signature</i></p> <p>Title: _____</p> <p>Print Name: _____</p> <p>Date: _____</p> <p>Address: _____</p> <p>_____</p> <p>Date* _____ <i>Approved by Board of Trustees if applicable</i></p> |
|--|--|

***Board approval is required prior to commencement of work if total cost exceeds the applicable bid threshold stated in Public Contract Code 20651 for non-exempted services.**

Foothill-De Anza Community College District

Exhibit A

Contract between Foothill-De Anza Community College District and _____,
hereinafter called "Design Professional".

I. Detailed description of services to be performed and work product to be delivered to District by Design Professional: (reference and attach additional pages, if necessary)

II. Amount and Method of Payment: (indicate lump sum payment or rate of pay; also include a list of tasks which must be completed prior to each progress payment and show the timeline for progress payments, if applicable)

In any event, the total payment for services of Design Professional shall not exceed \$_____ and District shall have the right to withhold payment if District determines that the quantity or quality of the work performed is unacceptable.

III. Term of the contract: The term of this contract shall commence on the date specified in Section 5 of this contract.

Foothill-De Anza Community College District

Exhibit “B” Insurance Requirements

Design Professional shall not commence work under this Agreement until required insurance certificate has been submitted to the requesting Project Manager. Certificates of insurance shall be issued by an insurer with an A M Best rating of A-VII or better, unless otherwise approved by District Risk Manager. Such certificate shall evidence all coverages and limits required by District in this Agreement and shall specify that insurers will give District thirty (30) days prior written notice of non-renewal or cancellation.

1. MINIMUM SCOPE AND LIMIT OF INSURANCE

Design Professional shall maintain in force, throughout the term of this Agreement, insurance as follows:

- 1.1. Workers' Compensation (statutory limits) and Employers' Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 employee and \$1,000,000 each disease, provided that Design Professional has employees as defined by the California Labor Code;
- 1.2. Commercial General Liability insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations;
- 1.3. Commercial Automobile Liability insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;
- 1.4. Professional Liability insurance, with limits not less than \$1,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$50,000 each claim.

2. OTHER INSURANCE PROVISIONS

- 2.1. If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this agreement.
- 2.2. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance.
- 2.3. Maintenance of the required insurance is a material condition of this Agreement and failure to maintain such insurance may, at the District's option, result in a declaration of material breach and suspension of Design Professional's further work under this Agreement.

Foothill-De Anza Community College District

**CHANGE NO. _____ TO AGREEMENT FOR
DESIGN PROFESSIONAL SERVICES
(Agreements less than \$350,000)**

The Agreement is changed only as described herein. All other terms, conditions, and prices remain unchanged. This Change to the Agreement is entered this _____ day of _____, 20_____, by and between the District, a community college district of the State of California, hereinafter called "District" and _____ hereinafter called "Design Professional."

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. Services to be performed by Design Professional. In consideration of the payments hereinafter set forth, Design Professional shall perform services for District in accordance with the terms, conditions and specifications set forth in the original Agreement and in the revised Exhibit "A" which is attached hereto and by this reference made a part hereof.
2. Payments. In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in revised Exhibit "A", District shall make payment to Design Professional in the manner specified in revised Exhibit "A".
3. Contract Term. This Agreement shall be in effect only as specified in the revised Exhibit "A". The District may terminate this contract at any time for any reason by providing 30 days notice to Design Professional. Termination to be effective on the date specified in the notice. In the event of termination under this section, Design Professional shall be paid for all work provided through the date of termination.
4. Other changes. (indicate "none" or describe applicable changes in detail)

PROJECT # _____ PURCHASE ORDER # _____

Foothill-De Anza Community College District

**CHANGE NO. _____ TO AGREEMENT FOR
DESIGN PROFESSIONAL SERVICES Less than \$350,000**

Revised EXHIBIT "A"

Contract between Foothill-De Anza Community College District hereinafter called "District" and _____, hereinafter called "Design Professional."

I. Detailed description of the change in services to be performed or work product to be delivered to District by Design Professional: (reference and attach additional pages, if necessary)

II. Amount and Method of Payment: (indicate the additional fee for increased scope of work or the deductive amount for decreased scope of work)

\$ _____ ORIGINAL AGREEMENT AMOUNT

\$ _____ PLUS OR MINUS AMOUNT OF ALL PREVIOUS CHANGES

\$ _____ PLUS OR MINUS AMOUNT FOR THIS CHANGE NO.

\$ _____ NEW TOTAL AGREEMENT AMOUNT

In any event, the total payment for services of Design Professional shall not exceed \$ _____ and District shall have the right to withhold payment if District determines that the quantity or quality of the work performed is unacceptable.

PROJECT # _____ PURCHASE ORDER # _____

Foothill-De Anza Community College District

III. Term of the contract: The term of this contract shall commence on the date specified in Section 5 of the original agreement, and shall continue until _____, 20__.

WITNESS THE EXECUTION HEREOF on the day and year written below.

| | |
|--|--|
| <hr/> <p>“Design Professional”</p> <p>By: _____ <i>Authorized Signature</i></p> <p>Title: _____</p> <p>Print Name: _____</p> <p>E-Mail: _____</p> <p>Date: _____</p> <p>Company Name: _____</p> <p>Design Professional’s Tax I.D. Number: _____</p> | <p style="text-align: center;">Foothill-De Anza Community College District “District”</p> <p>By: _____ <i>Authorized Signature</i></p> <p>Title: _____</p> <p>Print Name: _____</p> <p>Date: _____</p> <p>Address: _____</p> <p>_____</p> <p>Date* _____ <i>Approved by Board of Trustees if applicable</i></p> |
|--|--|

***Board approval is required prior to commencement of work if total cost exceeds the applicable bid threshold stated in Public Contract Code 20651 for non-exempted services.**

PROJECT # _____ PURCHASE ORDER # _____

**DESIGN PROFESSIONAL AGREEMENT – Agreements less than \$350,000
(DP)
INSTRUCTIONS**

INSTRUCTIONS

1. The Design Professional Agreement – Agreements less than \$350,000 packet consists of the following components:
 - Instructions
 - Agreement for Design Professional Services (Agreements less than \$350,000)

2. It is the end-users responsibility to do the following **prior** to the contractor providing services:
 - 2.1 Complete all fillable sections of the Agreement for Design Professional Services (Agreements less than \$350,000) and obtain the appropriate signatures
 - 2.2 Obtain a current Vendor Information Form & W-9 and submit to Accounts Payables, even if one was previously provided to ensure no discrepancies with 1099
 - 2.3 Obtain proof of insurance prior to the commencement of work
 - 2.4 Contact Risk Management at risk@fhda.edu regarding all questions related to insurance coverage and/or exception authorization.

3. If this agreement is not bond funded, \$5,000 or less, and payment is a single invoice, you may submit the completed agreement, W-9, and [Payment Authorization Form](#) directly to District Accounts Payable.

- OR -

If you will be paying more than one invoice against the agreement or if the agreement is over \$5,000, submit the complete agreement, W-9, and proof of insurance along with an online Banner requisition to District Purchasing Services. After Purchasing issues the PO, submit the Contractor's invoices to District Accounts Payable and indicate the PO number on each invoice.

END INSTRUCTIONS

Foothill-De Anza Community College District

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
(Agreements Less than \$350,000)**

This agreement shall be used for professional services when the scope of services includes *pre-design, programming, special and conceptual studies, planning, and/or assessment work*. Pursuant to Civil Code Section 2782.8 a design professional is defined as an architect, landscape architect, engineer, or land surveyor.

This Agreement entered this _____ day of _____, 2____, by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and _____ hereinafter called "Design Professional." Each of District and Design Professional are sometimes hereinafter referred to as a "Party" and collectively as the "Parties".

WITNESSETH

WHEREAS, pursuant to Foothill-De Anza Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage contractors to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, it is necessary and desirable that a Design Professional be engaged by District for the purpose of performing services hereinafter described:

NOW, THEREFORE, IT IS HEREBY AGREED by the Parties as follows:

1. Services to be performed by Design Professional. In consideration of the payments hereinafter set forth, Design Professional shall perform services for District in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A" attached hereto and by this reference made a part hereof. Design Professional shall perform all the services described in Exhibit A for the sum not to exceed \$_____.
2. Payments. In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", District shall make payment to Design Professional in the manner specified in Exhibit "A."
3. Relationship of the Parties. It is understood that this is an Agreement by and between contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Design Professional.
4. Non-Assignability. Design Professional shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this section automatically shall terminate this Agreement.
5. Contract Term. This Agreement shall be in effect from _____ through _____. The District may terminate this contract at any time for any reason by providing 30 days notice to Design Professional. Termination to be effective on the date specified in the notice. In the event of termination under this section, Design Professional shall be paid for all work provided to the date of termination.
6. Indemnification
 - 6.1. Design Professional's Indemnity of District.
 - 6.1.1. To the extent that claims are made against the District which arise out of, pertain to or relate to negligence, recklessness or willful misconduct of the Design Professional, Design

Foothill-De Anza Community College District

Professional shall defend, hold harmless and indemnify District and its employees, officers, Trustees, agents and representatives against such claims. Provided, however, in no event shall the cost to defend such claims charged to the Design Professional exceed the Design Professional's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants in such action is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other Parties regarding unpaid defense costs.

- 6.1.2. The types of claims included within Design Professional's above-stated indemnity obligation include (i) injury or death of Design Professional's or the Design Professional's Design Consultants' employees arising out of this Agreement; (ii) injury or death of persons or damage to property, including the removal or replacement of any in-place work during or after project completion; (iii) other costs or charges, to the extent the liabilities, damages and losses are caused by willful misconduct, recklessness, or negligence of the Design Professional or Consultant of the Design Professional, and (iv) shall include, subject to the proviso in subsection 6.1.1 above, attorneys fees and costs incurred by the District.
- 6.1.3. Design Professional's indemnity obligation as stated herein shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable statute of limitations.
- 6.1.4. This indemnity agreement shall not be construed to limit the enforceability of other contractual provisions between the District and the Design Professional requiring cooperation with the public agency regarding any claim by a construction contractor.
- 6.1.5. It is the intent of the District that the Design Professional's indemnity obligation set forth above shall be in accordance with California Civil Code Sections 2778 and 2782.8 and shall be a Type II (comparative/proportionate) agreement and not a Type I agreement, which would otherwise shift all indemnity obligations to the Design Professional.
- 6.2. Design Professional Bound to Arbitration by Other Claims. In the event of any claim, arbitration demand filed on behalf of the prime Design Professional or any Design Professional sub-consultants in which design deficiencies or errors, or Design Professional contract administration deficiencies are alleged as a basis for said claim, Design Professional agrees to participate as a party in any such arbitration or state court litigation, and shall further be bound as a party to any arbitration set forth or required under California Public Contract Code § 20104, et seq.
- 6.3. District's Indemnity of Design Professional. The District shall indemnify and hold harmless the Design Professional, its employees and consultants from all claims arising of bodily injury (including death) and physical damage (other than to the project itself and property covered by insurance), but only to the extent that they arise out of the willful acts, omissions or other conduct of the District, and/or the negligence of the District.
7. Insurance. Insurance requirements are attached as Exhibit "B."
8. Non-Discrimination.
 - 8.1. General. No person shall, on the grounds of race, color, national or ethnic origin, religious affiliation or non-affiliation, gender, marital status, sexual orientation, age, physical or mental disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement.
 - 8.2. Employment. Design Professional shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Design Professional's personnel policies shall be made available to District upon request.

Foothill-De Anza Community College District

9. Substitutions: If particular people are identified in Exhibit “A” as working on this contract, the Design Professional will not assign others to work in their place without written permission from the District Purchasing Agent. Any substitution shall be with a person of commensurate experience and knowledge.
10. Sole Property of the District: Any system or documents developed, produced or provided under this contract shall become the sole property of the District. Notwithstanding any other provision herein, any intellectual property discovered or developed by Design Professional in the course of performing or otherwise as a result of its work hereunder shall be the sole property of the District.
11. Contract Renewal. This Agreement may be renewed for additional time periods as long as the original contract term plus the renewal periods does not exceed five years, provided that both Parties sign the renewal, insurance coverage pursuant to Section 7 is still in effect, and the cost of the terms combined will not exceed (a) \$350,000.00.
12. Expenditure Of Public Funds. Design Professional agrees to comply with Government Code Section 8546.7 which provides that the contracting Parties for any contract involving expenditure of public funds in excess of \$10,000.00 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.
13. Confidentiality. In performing its duties hereunder the Design Professional may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC Section 1232(g). The Parties agree that such incidental access is not a provision or conveyance or disclosure to Design Professional of student record information in violation of Section 1232(g) or of any similar state law. Design Professional agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.
14. Merger Clause. This Agreement, including Exhibit “A” attached hereto and incorporated herein by reference, constitutes the sole agreement of Parties hereto and correctly states the rights, duties and obligations of each Party as of the document’s date. Any prior agreement, promises, negotiations or representations between the Parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the District Purchasing Agent. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit “A” attached hereto, the terms, conditions or specifications set forth herein shall prevail.

Foothill-De Anza Community College District

WITNESS THE EXECUTION HEREOF on the day and year written below.

| | |
|--|--|
| <hr/> <p>“Design Professional”</p> <p>By: _____ <i>Authorized Signature</i></p> <p>Title: _____</p> <p>Print Name: _____</p> <p>Date: _____</p> <p>Address: _____</p> <p>Email: _____</p> <p>Design Professional’s Tax I.D. Number: _____</p> | <p>Foothill-De Anza Community College District “District”</p> <p>By: _____ <i>Authorized Signature</i></p> <p>Title: _____</p> <p>Print Name: _____</p> <p>Date: _____</p> <p>Address: _____</p> <p>_____</p> <p>Date* _____ <i>Approved by Board of Trustees if applicable</i></p> |
|--|--|

***Board approval is required prior to commencement of work if total cost exceeds the applicable bid threshold stated in Public Contract Code 20651 for non-exempted services.**

Foothill-De Anza Community College District

Exhibit A

Contract between Foothill-De Anza Community College District and _____,
hereinafter called "Design Professional".

I. Detailed description of services to be performed and work product to be delivered to District by Design Professional: (reference and attach additional pages, if necessary)

II. Amount and Method of Payment: (indicate lump sum payment or rate of pay; also include a list of tasks which must be completed prior to each progress payment and show the timeline for progress payments, if applicable)

In any event, the total payment for services of Design Professional shall not exceed \$_____ and District shall have the right to withhold payment if District determines that the quantity or quality of the work performed is unacceptable.

III. Term of the contract: The term of this contract shall commence on the date specified in Section 5 of this contract.

Foothill-De Anza Community College District

Exhibit “B” Insurance Requirements

Design Professional shall not commence work under this Agreement until required insurance certificate has been submitted to the requesting Project Manager. Certificates of insurance shall be issued by an insurer with an A M Best rating of A-VII or better, unless otherwise approved by District Risk Manager. Such certificate shall evidence all coverages and limits required by District in this Agreement and shall specify that insurers will give District thirty (30) days prior written notice of non-renewal or cancellation.

1. MINIMUM SCOPE AND LIMIT OF INSURANCE

Design Professional shall maintain in force, throughout the term of this Agreement, insurance as follows:

- 1.1. Workers' Compensation (statutory limits) and Employers' Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 employee and \$1,000,000 each disease, provided that Design Professional has employees as defined by the California Labor Code;
- 1.2. Commercial General Liability insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations;
- 1.3. Commercial Automobile Liability insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;
- 1.4. Professional Liability insurance, with limits not less than \$1,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$50,000 each claim.

2. OTHER INSURANCE PROVISIONS

- 2.1. If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this agreement.
- 2.2. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance.
- 2.3. Maintenance of the required insurance is a material condition of this Agreement and failure to maintain such insurance may, at the District's option, result in a declaration of material breach and suspension of Design Professional's further work under this Agreement.

**Master Design Professional Agreement
Between
Foothill - De Anza Community College District
And**

This Master Agreement (“Agreement”) is made and entered into by and between the **Foothill-De Anza Community College District**, 12345 El Monte Road, Los Altos Hills, CA 94022, (hereinafter, referred to as the “District”), and _____, located at _____, (hereinafter referred to as “Design Professional”) as of the date of District’s execution (“Effective Date”). Each of District and Design Professional are sometimes hereinafter referred to as a “Party” and collectively as the “Parties”.

R-E-C-I-T-A-L-S

WHEREAS, in connection with the design, bidding and construction of the Projects, the District has retained _____ (“the Design Professional”) to provide services as the District’s representative in connection with the design, bidding and construction of the Projects.

WHEREAS, the District has identified Projects (the “Project”) to be designed, bid and constructed at the District’s Foothill College Campus or De Anza College Campus. From time to time, the District will authorize the Design Professional to commence with basic Services or Additional Services, as included in this Master Agreement, for an identified Project by issuing a mutually acceptable **Project Assignment Amendment (“PAA”)** to this Agreement for the identified Project.

WHEREAS, the Design Professional and its Design Consultants are each duly qualified and properly licensed/registered to provide and perform all Services under this Agreement and the subsequent PAA(s).

NOW THEREFORE, the Parties agree as follows:

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between the District and Design Professional shall consist of this Agreement including:

- ___ Attachment A - Schematic Design (SD) Criteria
- ___ Attachment B - Design Development (DD) Criteria
- ___ Attachment C - Construction Documents (CD) Criteria
- ___ Attachment D - Estimating Standards
- ___ Attachment E - Compensation
- ___ Attachment F - Project Assignment Amendment (PAA)

2. DESIGN PROFESSIONAL'S RESPONSIBILITIES

2.1. Design Professional’s Services

- 2.1.1. **Performance of Services.** The Design Professional's Services consist of all services performed by the Design Professional, Design Professional's

employees and Design Consultants as enumerated in Sections 3 'Scope of Design Professional's Services' and 4 'Additional Services' of this Agreement, including basic Services, Additional Services, and Contingent Additional Services, as authorized by the PAA for each Project.

- 2.1.2. **Design Professional Schedules.** The Services shall be performed in an expeditious manner, consistent with professional skill and care and the orderly progress of Project design, bidding and construction. The District and Design Professional will mutually agree upon start/finish dates for the Services or if required by the District, the Design Professional shall prepare a schedule ("the Design Professional Schedule") which identifies the principal activities of the Services to be performed or provided by the Design Professional for the Project and which graphically illustrates the planned progression of the Services. The Design Professional Schedule shall be submitted to the District for review and comment; the Design Professional shall revise the Design Professional Schedule as necessary to obtain the District's acceptance of the Design Professional Schedule for the Project. Time limits established by the Design Professional Schedule accepted by the District shall not, except for reasonable cause, be exceeded by the Design Professional or District.
- 2.1.3. **Standard of Care.** The Design Professional, its Design Consultants and their respective officers, agents, employees, subcontractors, consultants or any persons or entities providing or performing any of the basic Services or authorized Additional Services or Contingent Additional Services for the Project shall provide or perform such services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances, and their respective applicable standards of care for school construction under all applicable laws, codes, and standards for those providing such services for projects of the type, scope and complexity of the Project.
- 2.1.4. **Partnering.** District and Design Professional shall cooperate and participate fully in Partnering at all levels and among all the parties involved in this Project, and at their own expense without additional compensation. Partnering shall mean both formal and informal interaction between and among all the parties involved in the Project, including, but not limited to, District representatives, the Design Professional and its Design Consultants, the General Contractor and key Subcontractors, the Program Manager, the Construction Manager and any outside entities as designated by the District to promote the desired goal of a successful, non-adversarial completion of the Project on time and within budget.
- 2.1.5. **Design-Build & Deferred Approval.** The Design Professional shall provide fully engineered Drawings and shall not, without the District's written consent, use "Deferred Approval" or "Design-Build" items that require the Contractor to furnish design engineering services beyond those normally required for construction means, methods, techniques, and sequences. The District may, in its sole and exclusive discretion, withhold, limit or restrict any request for consent to utilize "Deferred Approval" or "Design-Build" items in the Construction Design Documents. The Design Professional shall review the District's General and Special Conditions and shall prepare the Construction Design Documents to coordinate with those documents.

3. SCOPE OF DESIGN PROFESSIONAL'S SERVICES

3.1. Basic Services

The basic Services consist of those described in this Section 3. Subsequent information may be incorporated into the PAA that further describes the Services required for a specific component of a Project. To the extent deemed necessary by the Design Professional, the Design Professional shall employ Design Professionals, mechanical, electrical, structural, and civil engineers licensed as such by the State of California, and such other consultants necessary for the provision of services under this Agreement. All consultants provided by the Design Professional shall be paid by the Design Professional. The Design Professional shall submit, for approval by the District, names of consultants for each professional element of service of the Project. District-approved consultants provided under basic Services shall be as named below or as stated in the PAA.

| Consultant Name | Discipline |
|-----------------|------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Nothing in the foregoing shall create any contractual relationship between District and any consultants employed by Design Professional under the terms of this Agreement. The Design Professional is as responsible for the performance of its consultants as it would be if it had rendered these services itself, and shall be responsible for all coordination and checking for completeness and accuracy with regard to errors or omissions pursuant to the Standard of Care and contractual requirements.

- 3.1.1. Design Professional shall designate a single principal or a staff member as the Project Architect or Project Engineer. So long as the Project Architect or Project Engineer performs in a manner acceptable to District, and remains in Design Professional's employ, the Project Architect or Project Engineer shall remain in charge of all design and other services required under this Agreement, including attending design-related meetings for the Project. This individual shall not be replaced by the Design Professional during the pendency of the particular Project without the consent and approval of the District. A District-approved Project Architect or Project Engineer must be named in the PAA for each Project.
- 3.1.2. Design Professional shall assist District in fulfilling the requirements of authorities and funding agencies whose interests bear on the design, cost, and construction of the Project.
- 3.1.3. Design Professional shall use due professional care to abide by all regulations imposed by all authorities having jurisdiction over the Project.
- 3.1.4. Design Professional shall cooperate with other professionals employed by the District for related work.
- 3.1.5. To the extent required by the District, Design Professional shall consult with authorized employees, agents, and representatives of the District and the individual Colleges relative to the design and construction of the Project. The Design Professional shall prepare an electronic written record of all such meetings and consultations and shall provide the Program Manager or

Construction Manager with the resulting notes for distribution within five (5) days.

- 3.1.6. Design Professional shall review the surveys; existing record documents; seismic data; mechanical, geotechnical, and other test reports; environmental documents including the Environmental Impact Report, and any other documentation furnished by District. From an examination of the site and a review of available information, Design Professional shall determine whether such data are sufficient for purposes of design or whether additional data are needed and, if so, recommend in writing the manner in which it be provided and the needed services obtained. Design Professional may rely on the information provided by District but only to the extent such reliance is consistent with Design Professional's contractual obligations under this Agreement.
- 3.1.7. Review, approval or acceptance of Design Professional's work whether by District or others and whether during Schematic Design Phase, Design Development Phase, Construction Documents Phase, Bid Documents Phase, Bidding Phase, Construction Phase, Guarantee to Repair Period, or otherwise, shall not relieve Design Professional from responsibility for errors and omissions in Design Professional's work, pursuant to the indemnity and contractual provisions and requirements as set forth in this Agreement.
- 3.1.8. The District may employ the services of other consultants to assist the District in its review of any design phase documents provided by the Design Professional. The Design Professional is required to consider and respond to all review comments sent to the Design Professional by the District, the Program Manager, or Construction Manager regardless of the origin of the comments. These reviews may include but are not limited to 3rd party engineering reviews, code compliance reviews, and constructability reviews.
- 3.1.9. Design Professional shall prepare Construction Documents in compliance with all applicable laws, codes, rules, regulations, ordinances, and standards including, without limitation, those listed in Attachments A through F. Design Professional may obtain and rely upon the advice of other professionals, building officials, and other qualified persons as to the intent and meaning of such laws, codes, rules regulations, ordinances and standards.
- 3.1.10. The services of the Design Professional shall be performed in accordance with this Agreement and additional requirements contained in the PAA.
- 3.1.11. LEED Certification / Sustainability. The Design Professional shall actively work with and support the District's Sustainability Committee to promote "green concepts" and techniques and to incorporate these concepts into the building design. The Design Professional shall also work with this Committee to establish sustainability goals and to develop guidelines for decision making consistent with achieving a minimum of LEED Silver Certification and the criteria for evaluating and monitoring the achievement of these goals.
- 3.1.12. Deliverables. In addition to the foregoing, the basic Services to be completed by the Design Professional for the Project, are further defined under Attachments 'A thru C' – Design Criteria. The Design Professional's basic Services shall also include the coordination of documents provided by District consultants. All electronic deliverables and files required to be provided by the Design Professional under this Agreement shall be provided in the most current

commercially available version of the native file formats and in Adobe PDF compatible file format.

3.2. Pre-Design and Concept Design Services

- 3.2.1. Scope of Services. The Design Professional shall provide planning, pre-design or concept design services as described in the PAA relating to those services, including presentation materials or reports as required by the scope of work.
- 3.2.2. Program Development. The Design Professional shall review the District's Project Parameters for the Project to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District. The Design Professional shall prepare a Program Report outlining and documenting these requirements and present it to the District for review and approval.
- 3.2.3. Program Evaluation. After the Design Professional receives District approval on the Program Evaluation/Report, the Design Professional shall prepare a written preliminary evaluation of the District's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Section 6.2.1 'Design Professional's Estimates', of this Agreement. The Design Professional shall revise the Program Report and Program Evaluation as necessary to obtain the approval of the District.
- 3.2.4. Investigation of Existing Conditions. The Design Professional shall investigate and assess the existing conditions and utility infrastructure systems for the planned improvement area as necessary to mitigate reasonably foreseeable conditions that would affect the project cost or schedule. This includes interviews with the appropriate District staff and direct inspections to determine any potential performance issues and unknown costs related to exterior envelope components, structure, interior finishes, utility infrastructure and equipment. Special care should be taken to inspect of readily accessible unconfined spaces, and to review hazardous materials reports and any "as-built" documentation including but not limited to underground conditions provided by the District. References to same shall be made or designated in the Design Documents to achieve a total project scope responsive to the approved program. Such investigation shall be conducted as early as practical.
- 3.2.5. Accessibility Requirements. The Design Professional shall meet with the Division of the State Architect (DSA), Office of Regulatory Services Accessibility Division to review the proposed strategies for providing accessibility to the Project. After the meeting, the Design Professional shall prepare a report summarizing accessibility strategy and distribute to the District and the DSA representative, and shall include approved elements in the Design Documents.
- 3.2.6. Deliverables. Deliverables for the Pre-Design and Concept Phase will include reports of the existing conditions investigation and accessibility requirements, an approved Program Report and an approved Program Evaluation addressing type of proposed construction, total proposed gross and assignable square feet of new construction with space allocations for any proposed programmatic functions/ areas, accessibility considerations, site improvements including landscaping, irrigation, site concrete and asphalt, utility infrastructure and a

reconciled estimate of probable cost within the District's approved Construction Budget for the Project.

3.3. Schematic Design Phase

- 3.3.1. Schematic Design Documents. The Design Professional shall prepare Schematic Design Documents for the Project which shall consist of Drawings and other documents which illustrate the principal components of the Project and the relationship of the principal components of the Project. The Schematic Design Documents shall also include an outline of the Specifications. See Attachment "A" – Schematic Design Criteria. See Design Professional's Approved Project Design Schedule for expected completion of 100% Schematic Design Documents. At the request of the District, the Design Professional may be required to prepare an electronic 3-dimensional model of the proposed project to be used in presentations to the District, the Design Committee and the Board of Trustees. The presentation will require a "fly-through" of the facility focused on critical spaces and perspectives as requested by the District.
- 3.3.2. District Review of Schematic Design Documents. Upon achieving 100% completion of the Schematic Design Documents, the Design Professional shall submit the Schematic Design Deliverable to the District for review and comment.
 - 3.3.2.1. Upon receipt of the District's comments, the Design Professional shall prepare a document itemizing the District's comments and shall respond fully to each comment, indicating the recommended disposition of each. The Design Professional shall identify those comments that affect the budget or have unintended effects on the Project design.
 - 3.3.2.2. The Design Professional shall incorporate into the Design Development Design Documents comments, modifications or other recorded notations approved by the District for inclusion in the Project.
- 3.3.3. Construction Cost Estimate. The Design Professional shall prepare a detailed Construction Cost Estimate of the completed Schematic Design Documents. Mark-ups, contingencies and escalations will be as mutually agreed between the Design Professional and the District. If the detailed Construction Cost Estimate materially exceeds the District's Construction Budget for the Project by more than 10%, without fault or neglect of the District, the Design Professional shall revise the Schematic Design Documents, at no additional cost to the District, so that the detailed Construction Cost Estimate conforms to the District's Construction Budget for the Project. The validation of the revised Schematic Design Documents shall appear in the Design Development Documents to reflect the Schematic Design Document changes that bring the project back into compliance with the District's Construction Budget.
- 3.3.4. Deliverables. In addition to any requirements noted above, the Design Professional shall provide four (4) printed full size copies and two (2) copies in an approved electronic format of the Schematic Design drawings and specifications to the District for review and comment.

3.4. DESIGN DEVELOPMENT PHASE

- 3.4.1. Design Development Documents. The Design Professional shall prepare, for approval by the District, Design Development Documents consisting of Drawings and other documents which fix and describe the size and character of

the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. See Attachment "B" - Design Development Criteria. See Design Professional's Project Design Schedule for expected completion of 100% Design Development Drawings.

- 3.4.2. District Review of Design Development Documents. Upon achieving completion of the Design Development Documents, the Design Professional shall submit the Design Development Deliverable to the District for review and comment.
 - 3.4.2.1. Upon receipt of the District's comments, the Design Professional shall prepare a document itemizing the District comments and shall respond fully to each comment, indicating the recommended disposition of each. The Design Professional shall identify those comments that affect the budget or have unintended effects on the Project design and shall recommend value engineering measures for key building systems and components.
- 3.4.3. Construction Cost Estimate. The Design Professional shall prepare a detailed Construction Cost Estimate of the completed Design Development Documents that includes all District review comments from previous design phases. Mark-ups, contingencies and escalations shall be as mutually agreed between the Design Professional and the District. If the Construction Cost Estimate materially exceeds the District's Construction Budget for the Project by more than 10%, without fault or neglect of the District, the Design Professional shall revise the Design Development Documents so that the detailed Design Development Cost Estimate conforms to the District's Construction Budget for the Project. The validation of the revised Design Development Documents shall appear in the Construction Design Documents to reflect the Design Development Document changes that bring the project back into compliance with the District's Construction Budget.
- 3.4.4. Value Engineering. The Design Professional shall cooperate with the Program Manager so that the Project continues to meet the budget in its Design Documents phase. The Design Professional shall suggest alternative materials, systems or solutions to improve value to the District and/or reduce project cost, and shall provide design information and alternatives and necessary cost calculations to the District and/or the Program Manager to support their suggestions. The Design Professional's participation in Value Engineering may require participation in associated workshops or meetings.
 - 3.4.4.1. The Design Professional shall incorporate those District comments and Value Engineering items approved by the District for inclusion into the Project. It is the Design Professional's sole responsibility to understand, identify and to notify the District of any unintended effects, including, but not limited to, matters of aesthetics, performance, functionality and durability that may result from any proposed Value Engineering item regardless of its origin. Once approved, all Value Engineering items will become part of the Approved Program and the Design Professional will be required to incorporate them into the Project within the budget and schedule parameters approved at that time.
- 3.4.5. Deliverables. In addition to the requirements noted above, the Design Professional shall provide four (4) printed full size copies and two (2) copies in

an approved electronic format of the Design Development drawings and specifications to the District for review and comment.

3.5. Construction Design Documents Phase

3.5.1. Construction Design Documents - 50% Completed

3.5.1.1. Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Construction Budget authorized by the District, the Design Professional shall prepare, for approval by the District, Construction Design Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

- The 50% completed Construction Design Documents shall be completed as shown in the Design Professional's Project Design Schedule.

3.5.1.2. District Review of 50% Construction Documents. Upon achieving completion of the 50% Construction Documents, the Design Professional shall submit the required deliverables to the District for review and comment.

- Upon receipt of the District's comments, the Design Professional shall prepare a document itemizing the District's comments and shall respond fully to each comment, indicating the recommended disposition of each. The Design Professional shall identify those comments that affect the budget or have unintended effects on the Project design and shall recommend Value Engineering measures for key building systems and components.

3.5.1.3. Construction Cost Estimate. The Design Professional shall prepare a detailed Construction Cost Estimate of the 50% completed Construction Design Documents. Mark-ups, contingencies and escalations will be as mutually agreed between the Design Professional and the District. If the Construction Cost Estimate materially exceeds the District's Construction Budget for the Project by more than 10%, without fault or neglect of the District, the Design Professional shall revise the Construction Design Documents and/or proceed with alternative design solutions so that the detailed Construction Cost Estimate for the Project conforms to the District's Construction Budget for the Project. If requested by the District, the Design Professional shall propose additive or deductive bid alternates and incorporate those approved by the District into the Construction Design Documents.

3.5.1.4. Value Engineering. The Design Professional shall cooperate with the Program Manager and Construction Manager so that the Project continues to meet the budget in its Design Documents phase. The Design Professional shall suggest alternative materials, systems or solutions to improve value to the District and/or reduce project cost, and shall provide design information and alternatives and necessary cost calculations to the District and/or the Construction Manager to support their suggestions. The Design Professional's participation in Value Engineering may require participation in associated workshops or meetings.

- The Design Professional shall incorporate those District comments and Value Engineering items approved by the District for inclusion into the Project. It is the Design Professional's sole responsibility to understand, identify and to notify the District of any unintended effects including, but not limited to, matters of aesthetics, performance, functionality and durability that may result from any proposed Value Engineering item regardless of its origin. Once approved, all Value Engineering Items will become part of the Approved Program and the Design Professional will be required to incorporate them into the project within the budget and schedule parameters approved at that time.

3.5.1.5. Deliverables. In addition to the requirements noted above, the Design Professional shall provide four (4) printed full size copies and two (2) copies in an approved electronic format of the 50% Construction Drawings and specifications to the District for review and comment.

3.5.2. Construction Design Documents - 100% Completed

3.5.2.1. The Design Professional shall prepare, for approval by the District, 100% Construction Documents consisting of Drawings and other documents which fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. See Attachment "C" – Construction Documents Criteria. See Design Professional's Project Design Schedule for expected completion of 100% Construction Documents.

3.5.2.2. Contractor Submittal Registry The Design Professional shall include in its 100% Construction Documents submittal to the District a detailed and comprehensive registry identifying all Contractor submittals as required by the plans and specifications, and/or the Bid Documents. This Submittal Registry shall be prepared and submitted in an editable Microsoft Office file format compatible with the District's current technology, and shall include specific submittal requirements, such as the format, quantity, designated reviewer(s), review requirements, or any other unique requirement, for each required submittal. The Design Professional shall update the Submittal Registry based on comments provided by the District or its consultants."

3.5.2.3. Finishes Selection. The District shall approve all finishes proposed by the Design Professional - who will be required to produce mock-ups and 3 (three) finish boards for approval. Color and Finish Boards shall be provided with physical samples of all materials exposed to view. Include a plan graphic identifying where all finishes and materials are located for review and approval of the client. The Design Professional shall endeavor to conform all suggested finishes to existing District standards.

3.5.2.4. District Review of 100% Construction Design Documents.

- Upon achieving one hundred percent (100%) completion of the Construction Design Documents, the Design Professional shall provide the required deliverables for the District's review. Design Professional will conduct a meeting to review the 100% Construction Design Documents with the District, College, and pertinent user groups to review and approve them.

- 3.5.2.5. DSA Submittal. The Design Professional shall provide the District with the Construction Design Documents when the Design Professional believes the documents are ready to be submitted to DSA for review and approval. The District may authorize the Design Professional to submit the documents to DSA before a thorough review of the documents is complete based on the Design Professional's written certification that the Project meets the District's established design, budget and schedule parameters. However, the District reserves the right to delay submission of the Documents to DSA until conformance with such parameters is verified to the District's satisfaction. The Design Professional shall submit the 100% Construction Documents package to DSA for review and approval after it receives District approval to do so.
- 3.5.2.6. Governmental Approvals. The Design Professional shall assist the District by taking the lead in filing documents and obtaining approvals required by all governmental authorities having jurisdiction over the Project including filings and approvals from DSA and the Fire District. The foregoing includes submitting for approvals, submitting applicable permits and other items necessary for approval of the Construction Design Documents, bidding of the Assigned Project, and construction of the Project. The Design Professional shall provide the District and its Construction Manager periodic budget/estimate updates at DSA and/or Construction Manager back check, and at issuance of each addenda, so the District may better monitor and control costs related to DSA or other jurisdiction's requested revisions or changes.
- 3.5.2.7. 100% Construction Cost Estimate. The Design Professional shall prepare a detailed Construction Cost Estimate of the one hundred percent (100%) completed Construction Design Documents. Mark-ups, contingencies and escalations will be as mutually agreed between the Prime Design Firm and the District. If the Construction Cost Estimate materially exceeds the District's Construction Budget for the Project, without fault or neglect of the District, the Design Professional shall revise the Construction Design Documents so that the detailed Construction Cost Estimate for the Project conforms to the District's Construction Budget for the Project. If requested by the District, the Design Professional shall propose additive or deductive bid alternates and incorporate those approved by the District into the Construction Design Documents.
- 3.5.2.8. Deliverables. In addition to the deliverables noted above, the Design Professional shall provide four (4) printed full size copies and two (2) copies in an approved electronic format of the 100% Construction Drawings and specifications to the District for review and comment.

3.5.3. Bid Documents Phase

- 3.5.3.1. The Design Professional shall produce a final set of documents suitable for reproduction and bidding. The criterion for Bid Documents includes the criteria used for Construction Documents as noted in Attachment "C, the requirements of all design review comments and Value Engineering items previously approved by the District, and shall incorporate the requirements of, and be in conformance with, all governmental authorities having jurisdiction over the Project. The Design Professional shall assemble a complete set of Bid Documents that includes contract

conditions, bidding requirements and other documents provided to the Design Professional by the District.

- 3.5.3.2. The Design Professional shall prepare a document itemizing all District review comments, constructability review comments, governmental review requirements, and proposed value engineering measures, and shall document the resolution of each item and the inclusion of items approved by the District into the Bid Documents.
- 3.5.3.3. District Review of Bid Documents. Upon achieving completion of the Bid Documents, the Design Professional shall submit the required deliverables to the District for review and approval.
- 3.5.3.4. The Design Professional shall make any adjustments necessary to obtain District approval. Once the District is satisfied that the Bid Documents represent the Project within acceptable scope, schedule and budget parameters, the District will authorize the Design Professional to proceed with submission of the Bid Documents to DSA for back-check, approval and processing. Any additional requirements imposed by the DSA at that time will be communicated to the District, inclusive of any likely impacts to the Project resulting from such additional requirements.
- 3.5.3.5. Construction Cost Estimate. The Design Professional shall update the approved 100% Construction Documents Construction Cost Estimate to include any changes to the design documents since the last approved estimate was performed. Mark-ups, contingencies and escalations will be as mutually agreed between the Design Professional and the District.
 - For projects with a Construction Budget of \$0-\$10 million, if the Construction Cost Estimate exceeds the District's Construction Budget by more than 10% without fault or neglect of the District, the Design Professional shall revise the Construction Design Documents and/or proceed with alternative design solutions so that the detailed Construction Cost Estimate for the Project conforms to the District's Construction Budget for the Project.
 - For projects with a Construction Budget of greater than \$10 million, if the Construction Cost estimate exceeds the District's Construction Budget by more than 5% without fault or neglect of the District, the Design Professional shall revise the Construction Design Documents and/or proceed with alternative design solutions so that the detailed Construction Cost Estimate for the Project conforms to the District's Construction Budget for the Project.
- 3.5.3.6. Deliverables. In addition to the requirements noted above, the Design Professional shall provide four (4) printed full size copies and two (2) copies in an approved electronic format of the Bid Document drawings and specifications to the District for reproduction and bidding purposes. All Bid Documents shall bear the stamp of approval from the Division of the State Architect.

3.6. Bidding or Negotiation Phase

- 3.6.1. Bidding Process. The Design Professional shall assist the District in obtaining bids from Contractors for construction of the Project, and assist in awarding and preparing the Construction Contract for the Project for execution. The Design

Professional's assistance shall include typical bidding issues and practices such as conducting the pre-bid job walk, attending pre-bid meetings, responding to bidder inquiries, assisting the District in issuing bid addenda, recommendations for developing alternate bid items and selection of the same for inclusion in the Construction Contract to be awarded, bid proposal reviews, and recommendations for award of the Construction Contract.

3.7. Construction Phase – Administration of the Construction Contract

- 3.7.1. Duration of Construction Phase. The Design Professional's responsibility to provide basic Services for the Construction Phase of the Project under this Agreement commences with the award of the Construction Contract for the Project and terminates upon substantial completion of the Project based on the original District-approved construction schedule and submittal of required documentation, and acceptance by all authorities having jurisdiction, or upon the District's written acceptance of the completed Project or written notice from the District that services are no longer required.
- 3.7.2. Administration of Construction Contract. The Design Professional shall provide administration of the Construction Contract for the Project as set forth below. The Design Professional's services in connection with administration of the Construction Contract for the Project shall be performed in a manner complementary to others providing services related to construction of the Project and/or administration of the Construction Contract for the Project, including, without limitation, the District, the Inspector of Record (IOR), the Construction Manager, and providers of testing and/or inspection services required for Project construction.
- 3.7.3. Design Professional Duties. Duties, responsibilities and limitations of authority of the Design Professional in connection with administration of a Construction Contract for the Project shall not be restricted, modified or extended without written agreement of the District and Design Professional. The District shall be solely responsible for ensuring that any agreement between the District and Contractor or any other party constructing a portion of the Project is in conformance with the terms and conditions contained in this Agreement. If the Agreement between the District and Contractor or other party requires services of the Design Professional beyond the basic Services described in this Agreement, the District agrees that the Design Professional shall be compensated for such services, if provided, as Additional Services or Contingent Additional Services. However, Design Professional shall not charge as Additional Services work that could/should have been performed as Basic Services during the original scheduled project duration.
- 3.7.4. Design Professional As Representative of the District. The Design Professional shall be a representative of and shall advise and consult with the District during construction of the Project until Final Payment to the Contractor for the Project is due, up to one year after the date of Substantial Completion of the work and the District's written acceptance of the completed Project or written notice from the District or Construction Manager that services are no longer required. The Design Professional shall have authority to act on behalf of the District only to the extent provided in this Agreement unless otherwise modified in writing.
- 3.7.5. Site Observations. The Design Professional and any of the Design Professional's consultants appropriate to the stage of work shall visit the

construction site and attend weekly on-site job meetings to become familiar with the progress and the quality of the work and to determine if the work is being performed in accordance with the Contract Documents and approved Contract Schedule. The Design Professional shall coordinate scheduling of site visits with the Construction Manager and all Design Professional contacts with Contractors shall be through the Construction Manager. However, the Design Professional shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an Design Professional, the Design Professional shall keep the District informed of the progress and quality of the Work, and shall endeavor to guard the District against defects and deficiencies in the Work. The Design Professional and Design Professional's major Consultants are required to issue written Field Reports, at a minimum every month until Occupancy, outlining work in place to date, and any notification of deficiencies given to the Construction Manager. (More extensive site representation may be agreed to as an Additional Service as described in Paragraph 3.3.9 Additional Site Observations). The Design Professional shall promptly advise the District of any work which the Design Professional believes is not in conformity with the Contract Documents.

- 3.7.6. Contractor Responsibilities. The Design Professional shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Construction Contract. The Design Professional shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents; provided, however, that the Design Professional shall keep the District informed of any material failure of the Contractor's Progress Schedule to comply with applicable requirements of the Construction Contract Documents or material failure of the Contractor to construct the Project in accordance with the Construction Contract Documents. The Design Professional shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- 3.7.7. Design Professional's Access to the Work. The Design Professional shall at all times have access to the Work of the Project wherever it is in preparation or progress.
- 3.7.8. Project Communications. Unless direct communication has been specifically authorized, the Design Professional and Contractor shall communicate through the Construction Manager. Communications by and with the Design Professional's Design Consultants shall be through the Design Professional.
- 3.7.9. Rejection of Work. The Design Professional shall have authority to reject Work that does not conform to the Construction Contract Documents. Whenever the Design Professional considers it necessary or advisable for implementation of the intent of the Construction Documents, the Design Professional shall have authority to require additional inspection or testing of the Work in accordance with the provisions of the Construction Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment

suppliers, their agents or employees or other persons performing portions of the Work.

3.7.10. Review of Submittals. The Design Professional shall review and take appropriate action upon Shop Drawings, Product Data and Samples (collectively referred to as "Submittals") required of the Contractor by the Construction Documents, but only for the limited purpose of checking for general conformance with the design concept expressed in the Construction Documents.

- If the Construction Documents require the Contractor to prepare a Progress Schedule which includes submission and review of Submittals as Progress Schedule activities and the Design Professional is afforded the opportunity to participate in the District's review and approval of the Contractor's Progress Schedule, the Design Professional's review of Submittals shall conform with the final approved Contractor's Progress Schedule.
- If the Construction Documents do not require, or if the District elects to waive the requirement that the Contractor prepare a Progress Schedule, the Design Professional's review of Submittals shall be completed within a reasonable time so as not to delay, hinder or interrupt the orderly progression of construction of the Project and completion of Project construction within the Construction Contract Time.
- The timeframes for the Design Professionals reviews or re-reviews shall be no longer than the following: Shop Drawing and Submittals – fourteen (14) calendar days; and High Priority Items – three (3) business days. These timeframes can only be changed by the District. If any of these timelines cannot be met, the Construction Manager and/or the District shall be informed prior to the timeframe expiration. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Construction Documents.
- The Design Professional's review shall not constitute review of safety precautions or, unless otherwise specifically stated by the Design Professional, of construction means, methods, techniques, sequences or procedures. The Design Professional's review of a specific item shall not indicate review of an assembly of which the item is a component.
- When professional certification of performance characteristics of materials, systems or equipment is required by the Construction Documents, the Design Professional shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.
- The Design Professional or its consultants shall not approve any Substitutions proposed by the Contractor without the express, written consent of the District's authorized representative. The timeframes for the Design Professional's reviews or re-reviews of Substitutions including approvals by the District's authorized representative shall be no longer fourteen (14) calendar days.

- 3.7.11. Response to Contractor Questions: The timeframes for the Design Professional's responses to requested information shall be no longer than the following: Requests for Information (RFIs) – and Requests for Clarification (RFCs) – seven (7) calendar days.
- 3.7.12. Changes. In consultation with the District, the Design Professional shall assist in the development of procedures, forms, and processes for the issuance and evaluation of Changes or potential changes to the Work. The Design Professional shall prepare such Orders with supporting documentation and data for the District's approval and execution in accordance with the Construction Documents, and may authorize minor changes in the Work not involving an adjustment in the Construction Contract Price or an extension of the Construction Contract Time and which are not inconsistent with the intent of the Construction Documents. The Design Professional shall assist the District in evaluating Change Proposals of the Contractor and shall advise the District of the nature, extent and scope of Change Proposals along with alternatives. The Design Professional shall make recommendations to the District for issuing Change Orders (including specific adjustments of the Construction Contract Price and the Construction Contract Time) on account of Change Order Requests, Change Proposals, Construction Change Directives or other actual or potential Changes to the Work. The Design Professional shall review and sign or take other appropriate action on Change Orders and Construction Change Directives prepared by the Program Manager for the District's approval and execution in accordance with the Contract Documents.
- 3.7.13. Project Quality Program. To the extent that the District or the Construction Manager has instituted a Project Quality Program to more vigorously observe the quality of construction as performed by the Contractor, the Design Professional shall conduct additional and more exhaustive inspections, support material reviews, and attend meetings as specified by the Construction Manager, as an additional service.
- 3.7.14. Substantial Completion; Final Completion. The Design Professional, assisted by the Construction Manager and Inspector of Record, shall conduct inspections to determine the date or dates of Substantial Completion and the date or dates of Final Completion. The Design Professional shall generate a Punch List, as needed and requested by the Construction Manager, of all incomplete or unaccepted items of work to assist and facilitate the completion of the Project by the Contractor. The Design Professional shall forward to the Construction Manager all warranties and similar submittals required by the Contract Documents which have been received from the Contractor. The Design Professional shall complete all DSA closeout procedures and requirements, including but not limited to, completion certificates, testing reports, and Change Order approvals. The Design Professional shall provide the District a detailed listing of documents delivered to DSA along with proof of delivery. The Design Professional shall issue a final Project Certificate for Payment upon compliance with the requirements of the Contract Documents. The Design Professional shall determine and certify the date of Final Completion.
- 3.7.15. Commissioning. The Design Professional and its Design Consultants shall participate in the commissioning of the project and startup process and assist any third-party commissioning agents engaged by the District for such purposes. Attendance of MEP systems Design Consultant(s) shall be required at all commissioning meetings.

3.7.16. **Project Closeout and Commissioning.** The Design Professional shall assist the Construction Manager in meeting its obligation to close-out the construction phase of the project within 90 days of Substantial Completion. This includes, but is not limited to responding to and obtaining DSA approvals, for all RFIs, potential Change Orders (PCOs), Change Orders (COs), requests for guidance, Punch List inspections, issuance of Completion Certificates, or any other required documentation needed to close out the Project including submitting all final DSA documentation. Unless directed otherwise by the District, the only exception to the 90 day construction closeout window is the commissioning process. The commissioning process will extend beyond the closeout window. If the Design Professional's failure to assist the Construction Manager causes the Contractor to not be able to close out the project within 90 days, the Design Professional may be subject to any additional costs from the District or Construction Manager caused by that failure if it is determined to result from the actions or inactions of the Design Professional.

3.7.17. Disputes; Interpretations Under the Construction Contract Documents

3.7.17.1. **Arbiter of Disputes.** The Design Professional shall interpret and decide matters concerning performance of the District and Contractor under the requirements of the Construction Documents on written request of either the District or Contractor. The Design Professional's response to such requests shall be made with reasonable promptness and within any time limits agreed upon. The Design Professional's decisions on claims, disputes or other matters, including those in question between the District and Contractor, except for those relating to aesthetic effect as provided in Section 3.7.17.3 'Aesthetic Effects', may be subject to arbitration as provided in this Agreement and in the Construction Documents.

3.7.17.2. **Design Professional's Decisions.** Interpretations and decisions of the Design Professional shall be consistent with the intent of and reasonably inferable from the Construction Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Design Professional shall endeavor to secure faithful performance by both District and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

3.7.17.3. **Aesthetic Effects.** The Design Professional's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Construction Documents.

3.7.17.4. **Punch List.** At the time of determining Substantial Completion and in conjunction with the District, the Construction Manager and the Contractor, the Design Professional shall note the conditions of the Work requiring correction, replacement, removal or other action necessary to comply and conform to the requirements of the Construction Documents ("the Punch List"). The Design Professional shall, in conjunction with the District, the Construction Manager, and the Contractor, determine the time reasonably necessary to complete the Punch List items. If mutual agreement is not reached regarding the time for the Contractor's completion of the Punch List, the Design Professional shall make a binding good faith determination of the time for the Contractor's completion of the Punch List.

3.7.17.5. Modification of Construction Phase Responsibilities. Notwithstanding the items of Construction Phase Basic Services described hereinabove, the scope of the Design Professional's Construction Phase basic Services may be modified by mutual agreement of the District and the Design Professional for the Project. Modifications to the scope of Construction Phase Basic Services, if any, for the Project shall be set forth in a revision to this Agreement.

4. ADDITIONAL SERVICES

- 4.1. General. The services described in this Section 4 are not included in Basic Services. If authorized by the District, Additional Services shall be paid for by the District as provided in this Agreement, in addition to the compensation for basic Services. The services described under Sections 4.2 'Project Representation Beyond Basic Services' and 4.4 'Optional Additional Services', may be provided if authorized or confirmed in writing by the District and Design Professional. If services described under Contingent Additional Services in Section 4.3 are required due to circumstances beyond the Design Professional's control, the Design Professional shall notify the District in writing prior to commencing such services, stating the reason for the change and estimated changes, if any, in the Design Professional's Project Contract Price or Design Professional's Schedule. If the District deems that such services described under Section 4.3 are not required, the District shall give prompt written notice to the Design Professional. If the District indicates in writing that all or part of such Contingent Additional Services is not required, the Design Professional shall have no obligation to provide those services.
- 4.2. Project Representation Beyond Basic Services. If more extensive representation at the Site than is described in Section 3.7.5 'Site Observations' is required, the Design Professional shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities. Project Representatives shall be selected, employed, and directed by the Design Professional, and the Design Professional shall be compensated therefore as agreed by the District and Design Professional. The furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Design Professional as described elsewhere in this Agreement.
- 4.3. Contingent Additional Services - Contingent Additional Services consist of:
- 4.3.1. Revisions to Design Documents. Making revisions to the approved Design Development Documents or Construction Design Documents when such revisions are: (a) inconsistent with any approvals or instructions previously given by the District not otherwise authorized by this Agreement; (b) required by the enactment, interpretation or revision of codes, laws or regulations subsequent to the preparation of such documents; or (c) due to changes required as a result of the District's failure to render decisions in a timely manner. Correction of any design errors or omissions shall not be considered Contingent Additional Services.
- 4.3.2. Assigned Project Changes. Providing services required because of significant changes in the Project including, but not limited to, size, quality, or complexity requested by the District.
- 4.3.3. Fire; Casualty. Providing consultation concerning replacement of the Project damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such damage, except to the extent that the Design Professional or its Design Consultants have caused or contributed to such fire or other casualty.

- 4.3.4. Contractor Default. Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the District or Contractor under the Construction Contract.
 - 4.3.5. Excessive Claims and RFIs. Providing services in evaluating an excessive number of claims and RFIs submitted by the Contractor or others in connection with the Work, except to the extent that such claims or RFIs arise out of the services, Design Documents or other work product provided or performed by or through the Design Professional and involve claims or RFIs that are substantially based on alleged design errors or omissions.
 - 4.3.6. Dispute Resolution Proceedings. Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Design Professional is party thereto or where the claims are significantly design related.
 - 4.3.7. Extended Construction Duration. Providing additional Construction Administration services when the construction duration is extended through no fault of the Design Professional.
 - 4.3.8. Additional Site Observations. Providing additional Site Observations when construction duration is extended through no fault of the Design Professional.
- 4.4. Optional Additional Services: Additional Services consist of:
- 4.4.1. Feasibility/Special Studies. Providing financial feasibility or other special studies, beyond what is detailed within the basic Services.
 - 4.4.2. Site Analysis. Providing planning surveys, site evaluation or comparative studies of prospective sites, beyond what is detailed within the basic Services.
 - 4.4.3. Special Surveys / Studies. Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project except to the extent expressly included in the basic Services under this Agreement.
 - 4.4.4. Quantity Surveys/Inventories. Providing detailed quantity surveys or inventories of material, equipment and labor, except as provided under 3.3.3 Schematic Design Construction Cost Estimate, 3.4.3 Design Development Construction Cost Estimate, and 3.5.1.3 and 3.5.2.7 Construction Design Construction Cost Estimates (at 50% and 100% CDs).
 - 4.4.5. Ownership/Operating Cost Evaluations. Providing analyses of owning, operating and life cycle costs.
 - 4.4.6. Interior Design. Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment, except to the extent that such items are included in the scope of the Construction Contract for the Project or included in the scope of the Design Professional's basic Services for the Project. Basic Services shall include sufficient furniture and equipment layout to confirm the functionality of the design.
 - 4.4.7. Upgrade Electrical Service. Should the need arise to augment existing utilities with new or upgraded services, provide engineering services and architectural

support for an electrical substation, upgrading high voltage transformers and 480V switchgear, or the incorporation of new power sources.

- 4.4.8. Inventory of Existing Facilities. Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 4.4.9. District's Agents Requirements. Services, exceeding those included in the scope of basic Services, in connection with the requirements of District's agents, representatives, vendors; i.e. bankers, insurance company, etc.
- 4.4.10. Post Final Payment. Providing services after issuance to the District of the Certificate for Final Payment for the Project except as provided under 3.1.11 LEED Certification and 3.7 Construction Administration which may extend the required service time period.
- 4.4.11. Record Documents. Providing services to prepare Record Design Documents or "As-Built" Drawings for the Project; provided, however, the Design Professional shall generally review the As-Built Drawings prepared by the Contractor for the Project, to the extent expressly included in the basic Services under this Agreement.
- 4.4.12. Professional Renderings. Providing preparation and presentation services of artistic representations / renderings, either drawn and / or colored, depicting the buildings future appearance, except to the extent expressly included in the basic Services under this Agreement.
- 4.4.13. Any Other Services. Providing any other services not otherwise included in this Agreement.

5. DISTRICT'S RESPONSIBILITIES

- 5.1. Project information. The District shall provide information regarding requirements for the Project, including a program, which shall set forth the District's objectives, schedule, constraints and criteria for the Project.
- 5.2. Construction Budget. The District shall establish and or provide a Construction Budget for the Project.
- 5.3. District Representative. The District shall designate a representative authorized to act on the District's behalf with respect to the Project. The District's Representative shall render decisions in a timely manner pertaining to documents submitted by the Design Professional in order to avoid unreasonable delay in the orderly and sequential progress of the Design Professional's services.
 - 5.3.1. The District designated representative shall be the person named in the PAA.
 - 5.3.2. Program Management and Coordination. The District has retained a Program Manager who will act as the District's agent to direct the Design Professional in the performance of its responsibilities. The Design Professional agrees to coordinate its work and activities with the Program Manager, and to act on the Program Manager's instructions. The Design Professional further agrees to coordinate its work with other consultants and contractors retained by the District to work on this project or on related projects.

- 5.4. Soils; Geotechnical Services. When required by the scope of the Project, the District shall furnish the services of geotechnical and soils engineers for the Project. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
- 5.5. District Design Consultants. The District shall furnish the services of Design Consultants other than those enumerated in Section 3 'Basic Services', when such services are reasonably required by the scope of the Project and are requested by the Design Professional and approved by the District. If the District approves of other Design Consultants, in lieu of the District retaining the services of such other Design Consultants, if provided in the Project Contract, the Design Professional shall retain such other Design Consultants.
- 5.6. Test/Inspection Services. The District shall furnish and Inspector of Record and structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Construction Contract Documents.
- 5.7. Project Consultants. Except for the Design Consultants included in the Design Professional's basic Services, the District shall furnish all accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the District may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the District.
- 5.8. Design Professional's Reliance on Information. The services, information, surveys and reports required by Sections 5.5 through 5.7 shall be furnished at the District's expense unless otherwise specified, and the Design Professional shall be entitled to rely upon the accuracy and completeness thereof, subject to the Design Professional's initial review and acceptance of such information, surveys and reports, and notification to the District of apparent errors or discrepancies therein.
- 5.9. District Provided Services/Information. Unless otherwise set forth in this Agreement, the District will provide the following information/services: (a) hazardous materials assessment/abatement consultant and information; (b) Site surveys and topography; (c) specification for furniture and/or other furnishings and equipment (FF&E) not included in the scope of the Construction Contract awarded by the District for construction of the Project.
- 5.10. District Notice. Prompt written notice shall be given by the District to the Design Professional if the District becomes aware of any fault, failure, defect, or neglect of Design Professional or in the services provided by Design Professional hereunder; provided that the failure or delay by the District in giving such notice shall not constitute a waiver of any right or remedy of the District arising out of such fault, failure or neglect of the Design Professional, except to the extent that such failure or delay of the District is materially prejudicial to the Design Professional's ability to remedy any such Design Professional fault, neglect or failure.
- 5.11. As-Built Drawings. The District shall require the Contractor to provide the District with As-Built Record Drawings indicating the location and size of all underground, concealed, or imbedded construction not covered in the original drawings, change orders, supplemental drawings, or Shop Drawings. The Contractor shall be required to record such construction on reproducible drawings furnished to the Contractor by the District. The Contractor shall

be required to submit completed record drawings to the Design Professional for review. Such a review by the Design Professional shall not relieve the Contractor of its responsibilities for the accuracy and completeness of the information recorded.

- 5.12. Permit/Agency Fees. The District shall pay all fees required by governmental authorities and agencies having jurisdiction over the Project.

6. CONSTRUCTION COST

- 6.1. Construction Cost Defined. Construction Cost includes those costs typically included in the Construction Contract Price and shall include the total cost or estimated cost to the District for construction of all elements of a Project as designed or specified by the Design Professional. The Construction Cost shall include the cost at then current market rates of labor and materials furnished to the District and equipment designed, specified, selected or specially provided for by the Design Professional, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Project during construction. Construction Cost does not include the compensation to the Design Professional under this Agreement, the costs of the land, rights-of-way, financing or other costs, which are the responsibility of the District as, provided in Section 5 'District's Responsibilities'.
- 6.2. Project Construction Budget. The Project Construction Budget for the Project is the total costs allocated by the District for construction of the Project, exclusive of the compensation to the Design Professional due under this Agreement, any Site acquisition costs, and the costs of furnishing and installing furniture, fixtures and equipment (FF&E) not included in the scope of the Construction Contract awarded for the Project. The Project Construction Budget is that budget stipulated in the PAA, which may be modified from time to time by the District in consultation with the Design Professional, provided, that if the District and Design Professional are unable to mutually agree upon modifications to the Project Construction Budget for the Project, the District shall have the authority in its sole reasonable judgment to effectuate modifications to the Project Construction Budget.
- 6.2.1. Design Professional's Estimates. The Design Professional's evaluations of the District's Project Construction Budget and their detailed Construction Cost Estimates prepared by American Society of Professional Estimator (ASPE) certified estimator represent the Design Professional's professional judgment as a design professional familiar with the construction industry of the then current Construction Cost to construct the Project as reflected in the then current Design Documents. It is recognized, however, that neither the Design Professional nor the District has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Design Professional cannot and does not warrant or represent that bids or negotiated prices will not vary from the District's Project Construction Budget or from the Construction Cost Estimate or evaluation of Construction Cost prepared or agreed to by the Design Professional.
- 6.2.2. Bid Costs Exceeding Project Construction Budget. If within ninety (90) days of the date upon which Design Professional obtains final DSA approval for the Construction Documents for the Project, the District shall have solicited Bid Proposals from bidders for award of the Construction Contract and such Bid Proposals are opened by the District within said ninety (90) days and the lowest bona fide Bid Proposal exceeds the Project Construction Budget, the District

may: (1) approve an increase in the Project Construction Budget; (2) reject all Bid Proposals and authorize re-bidding of the Project; (3) abandon or terminate the Project; or (4) revise the Project scope, or reduce or eliminate portions of the Project so as to limit and reduce construction costs. Unless the District has theretofore directed changes, modifications or inclusions in the scope of the Project or component parts thereof which cause the Bid Proposals to exceed the Project Construction Budget, if the District elects to revise the Project pursuant to (4) above, the Design Professional shall make all necessary revisions to the Construction Documents without adjustment of the Contract Price; if the District elects to reject all Bid Proposals and re-bid the Project, for such subsequent re-bid(s), Design Professional shall perform the obligations set forth in Section 3 'Scope of Design Professional's Services' above in connection with such re-bid(s) without adjustment of the Contract Price for the Project.

6.2.3. If the lowest bona fide Bid Proposal for this Project exceeds the Project Construction Budget, and if the District elects to approve an increase in the Project Construction Budget, there shall be no adjustment to the Design Professional's Contract Price.

6.3. District Responsibility for Re-Design Costs. The District may, in its sole discretion, engage an independent consultant to provide a Construction Cost estimate of the Project for comparison with the Design Professional's Construction Cost estimate for the Project. If the District's independently prepared Construction Cost estimate is reconciled with the Design Professional's Construction Cost estimate for the Project and both Construction Cost Estimates are within the Construction Budget for the Project, and if a minimum of three Bid Proposals received for the Project exceed the Project Construction Budget as identified in Section 6.2.2 by no more than seven percent (7%), then the actual cost for the Design Professional to redesign the Project, modify Construction Documents, and the efforts to re-perform obligations set forth in Section 3 (Scope of Design Professional's Services) shall be compensated as Additional Services in accordance with Section 12 (Project Contract Price & Basis of Compensation).

6.3.1. If the bids received exceed the Construction budget as identified in Section 6.2 (Project Construction Budget) by more than seven percent (7%), the Design Professional shall make all necessary revisions to the Construction Documents without adjustment to the Contract Price.

6.3.2. If however, there are less than 3 Bid Proposals received for the Project, Design Professional shall only be required to redesign at its own cost if the low bid under that scenario exceeds 10%.

6.3.3. This increase now approved by the District, from 5% to 7%, (for three or more bids) and from 5% to 10% (for less than 3 bids) shall remain effective from July 1, 2021 through June 30, 2024 for a period of three years, at which time the District will reassess the market conditions and may increase or decrease the new 7%/10% demarcations, with appropriate notice to all District approved architects. No currently submitted Architect Proposal or signed Contract shall be affected by any such change that may or may not occur on or about June 30, 2024.

7. USE OF DESIGN DOCUMENTS

- 7.1. District Ownership. Ownership of the originals and reproducible drawings, specifications and other Design Documents prepared by or on behalf of the Design Professional under this Agreement, including without limitation working drawings, master plans, preliminary sketches, architectural presentation drawings, structural and other engineering calculations or computations, estimates, Schematic Design Drawings, Design Development Drawings, and Construction Drawings are and shall remain the property of the District. By this reference, the provisions of California Education Code §17316 are incorporated by reference herein in their entirety and references in said §17316 to “school district” shall be deemed to refer to the District. Upon the termination of this Agreement, termination of any Revision for the Project, or the abandonment or all or any portion of the Project, the District may use any portion of the completed drawings, specifications, estimates and other Design Documents completed at the time of termination or abandonment for any purpose relating to the Project for which the Design Documents were prepared, including without limitation, completion of Design Documents for the Project, construction of the Project, future additions, alterations, repairs, maintenance, reference, use or occupancy. The foregoing notwithstanding, the Design Professional shall be permitted to retain copies, including reproducible and electronic file copies of the Design Documents for information and reference, including the re-use of details contained in the Design Documents for other projects, provided that the rights of the Design Professional hereunder shall not be deemed to permit the Design Professional to use the Design Documents prepared under this Agreement in whole or in substantial part for other projects.
- 7.1.1. In the event that the District permits any unauthorized use, reuse or modification to the Design Documents by any person, firm or legal entity, the District agrees to indemnify, defend and hold the Design Professional, its employees and consultants harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms, or any other legal entity, on account of any damage or loss to property or persons, including death, arising out of such unauthorized use, reuse or modification of the Design Documents and other documents, except where the Design Professional is found to be liable for such damages or losses by a court or forum of competent jurisdiction.
- 7.2. Electronic Files. The Design Professional shall make available if requested to the District at each stage of its submission of Schematic Design Documents, Design Development Design Documents, Construction Design Documents, and Bid Documents, the corresponding electronic files for deliverables including Drawings and Specifications. Electronic files should be formatted in the latest version of MS Word (for Specifications and other written materials) and AutoCAD (for Drawings). All progress and final document submittals shall be both in paper and electronic formats. Wherever electronic documentation is required, the format shall be portable USB thumb drive prepared on the most currently available version of AutoCAD. 3D design files must be turned over according to IFC file format standards for file portability. Electronic format information shall be submitted in full compliance with the CAD Layer Guidelines developed by The Task Force on CAD Layer Guidelines and published by the American Institute of Architects Press. The Design Professional is aware that public entities are now required to make said electronic files available to contractor plan room services, upon request, at no charge pursuant to PCC§§10111.2 and 20103.7.

7.3. Archive of Electronic Files. Due to risk of damage, anomalies in transcription and modification during use, whether intended or otherwise, it is agreed that the Design Professional shall archive a copy of the electronic media transferred to the District, the contents of which it is expressly agreed shall be conclusive proof in all disputes over the content of electronic media furnished to the District. Hard paper copies of the information contained on the electronic media are to be made available.

8. DISPUTE RESOLUTION; MEDIATION AND ARBITRATION

8.1. Continuation of Design Professional's Services. Except in the event of the District's failure to make undisputed payment of the Contract Price for the Project due Design Professional for services performed pursuant to this Agreement, notwithstanding any disputes between District and Design Professional hereunder, Design Professional shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes. Unless otherwise agreed in writing, the Design Professional shall continue to carry out its services as provided in this Agreement and maintain its progress during any proceedings undertaken pursuant to this Section, and the District shall continue to make payments to the Design Professional in accordance with this Agreement, except for matters specifically relating to the dispute.

8.2. Arbitration. Except as provided in Section 8.1, any other claims, disputes, disagreements or other matters in controversy between the District and the Design Professional arising out of, or related, in any manner, to the Contract Documents, or the interpretation, clarification or enforcement thereof shall be resolved by arbitration conducted in accordance with the Engineering and Construction Arbitration Rules and Procedures of JAMS in effect as of the date that a demand for Arbitration is filed, except as expressly modified herein. The location for any arbitration commenced hereunder shall be the regional office of JAMS located in San Francisco.

8.3. The Parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, for mediation and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to the clause set forth in Section 8.3.4 below.

8.3.1. Either party may commence mediation by providing to JAMS and the other party a written Request for Mediation, setting forth the subject of the dispute and the relief requested.

8.3.2. The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.

8.3.3. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

8.3.4. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written Demand for Arbitration at any time following the

initial mediation session or at any time following 45 calendar days from the date of filing the written Request for Mediation, whichever occurs first ("Earliest Initiation Date"). The mediation may continue after the commencement of arbitration if the parties so desire. The 45 day time period shall be extended by any ongoing post-mediation follow-up efforts by the mediator to reach resolution.

- 8.3.5. At no time prior to the Earliest Initiation Date shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by JAMS Rules or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of Section 8.3.2 above.
- 8.3.6. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until 15 calendar days after the Earliest Initiation Date. The parties will take such action, if any, required to effectuate such tolling.
- 8.4. The Award rendered by the Arbitrator(s) shall be final and binding upon the District and the Design Professional. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations.
- 8.4.1. In the event more than one Demand for Arbitration is made by either the District or the Design Professional, all such controversies shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and the Design Professional. The Design Professional's Surety, a Sub-consultant, a Subcontractor or Material Suppliers to the Design Professional and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements with the Design Professional, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the District and the Design Professional, in which case an appropriate severance order shall be issued by the Arbitrator(s).
- 8.4.2. In any arbitration arising out of or related to this Agreement, the arbitrator(s) shall award to the prevailing party, its attorneys' fees and costs, including filing fees and any administrative costs associated with arbitration, the arbitrator's fees, and witness fees, which are reasonably incurred by the prevailing party in connection with the arbitration. If the arbitrator(s) determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the arbitrator(s) may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §§1285 et seq.

9. TERMINATION, SUSPENSION OR ABANDONMENT

- 9.1. Termination for Default. This Agreement or a Project Revision may be terminated by either party upon not less than seven (7) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement, or a Project Revision, through no fault of the party initiating the termination.
- 9.2. District Right to Suspend. If the Project is suspended by the District for more than 60 consecutive days, the Design Professional shall be compensated for services performed prior to notice of such suspension. When the Assigned Project is resumed, the Design Professional's compensation shall be equitably adjusted to provide for expenses incurred as a direct result of the suspension and the resumption of the Design Professional's services.
- 9.3. District Right to Abandon. A Project Revision may be terminated by the District upon not less than seven (7) calendar days written notice to the Design Professional in the event that the Assigned Project is permanently abandoned. If the Project is abandoned by the District for more than 90 consecutive days, the Design Professional may terminate the Project Contract for the Project by giving written notice.
- 9.4. Design Professional Suspension. Failure of the District to make payments to the Design Professional in accordance with this contract may be treated by the Design Professional as substantial nonperformance and cause for termination. If the District fails to make payment when due under this contract, the Design Professional may, upon seven (7) calendar days written notice to the District, suspend performance of services under this Agreement. Unless the payment in full is received by the Design Professional within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Design Professional shall have no liability to the District for delay or damage caused the District because of such suspension of services. The Design Professional shall further have the right to retain possession of all Drawings, Specifications and other Design Documents prepared for the Project until full payment of all amounts due for services performed has been received. The Design Professional shall not be held liable for any claims, liabilities, costs and expenses, damages or losses that may result from any such withholding of Drawings, Specifications and other Design Documents. No failure on the part of either party of this Agreement to exercise its rights hereunder shall be or operate as a waiver, release or relinquishment of any rights or powers conferred under this Agreement.
- 9.5. Compensation to Design Professional. In the event of termination of this Agreement which is not the fault of the Design Professional, the Design Professional shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.6 'District Termination for Convenience'.
- 9.6. District Termination for Convenience. The District may, at any time, upon seven (7) calendar days advance written notice to Design Professional terminate the entirety of this Agreement for the District's convenience and without fault, neglect or default on the part of Design Professional. In such event, this Agreement shall be deemed terminated seven (7) calendar days after the date of the District's written notice to Design Professional or such other time as the District and Design Professional may mutually agree upon. If the District terminates this Agreement, the District shall make payment to the Design Professional for services provided for the Project through the date of termination plus actual costs incurred by Design Professional directly attributable to such termination.

10. MISCELLANEOUS PROVISIONS

- 10.1. **Governing Law; Interpretation.** This Agreement and each Revision issued hereunder shall be governed by the laws of the State of California. This Agreement and any Revision issued hereunder shall be interpreted in accordance with their fair meaning and strictly for or against the District or the Design Professional.
- 10.2. **Statutes of Limitation.** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitation shall commence to run not later than either the date of Substantial Completion for the Project for acts or failures to act occurring prior to Substantial Completion of the Project, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion of the Project, except for duties performed for up to one year after substantial completion.
- 10.3. **Waiver of Property Damage.** District and Design Professional waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by errors and omissions/property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the General Conditions of the Contract for Construction. The District and Design Professional each shall require similar waivers from their contractors, consultants and agents.
- 10.4. **Successor and Assigns.** The District and Design Professional, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither District nor Design Professional shall assign this Agreement without the written consent of the other.
- 10.5. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the District and Design Professional and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the District and Design Professional.
- 10.6. **Third Parties.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the District or Design Professional.
- 10.7. **Asbestos; PCBs, Toxic Substances.** Unless otherwise provided in this Agreement, the Design Professional and Design Professional's consultants shall have no responsibility for the discovery, 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. Accordingly, the District hereby agrees that no claim or suit for negligence, breach of contract, indemnity or any other cause of action will be brought by the District against the Design Professional, its employees and consultants arising out of the presence of asbestos, asbestos-related materials, or any other hazardous substance, in any form whatsoever, as defined by the Environmental Protection Agency or any other public authority, in any building or structure that is the subject of services performed by the Design Professional on this Project. The District further agrees to indemnify, defend and hold the Design Professional, its employees and consultants harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entity, on account of any damage or loss to property or persons, including death, arising out of the presence of hazardous substances, including, but not limited to, asbestos or asbestos-related

materials, except where the Design Professional is found to be solely liable for such damages or losses by a court or forum of competent jurisdiction.

10.8. **Design Professional Use of Project Materials.** The Design Professional shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Design Professional's promotional and professional materials. The Design Professional's materials shall not include the District's confidential or proprietary information if the District has previously advised the Design Professional in writing of the specific information considered by the District to be confidential or proprietary. The District shall provide professional credit for the Design Professional on the construction sign and in the promotional materials for the Project.

10.9. **Insurance.** Unless otherwise stated in the PAA, at all times during performance of services under this Agreement, the Design Professional and each of its Design Consultants under this Agreement or for an Assigned Project shall obtain and maintain the following insurance coverage: Each of the Design Professionals Design Consultants shall maintain insurance coverage equal to the amount listed below.

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|---|--|
| Commercial General Liability | \$2,000,000 per occurrence for bodily injury, personal injury and property damage. |
| Automobile Liability | \$1,000,000 combined single limit per accident for bodily injury and property damage. |
| Workers' Compensation and Employers Liability | Workers' Compensation limits as required by the California Labor Code; and Employers Liability limits of \$1,000,000 per accident. |
| Professional Liability Errors & Omissions | \$2,000,000 per occurrence. |

10.9.1. Prior to commencement of services for the Project, the Design Professional shall deliver to the District, Certificates of Insurance evidencing the insurance coverage required hereunder for the Design Professional and each Design Consultant for the Project. Said Insurance Certificates shall also show the deductible or any self-insured amounts of each policy.

10.9.2. All policies of insurance required hereunder shall be acceptable only if issued by an admitted insurance carrier licensed to do business in the State of California, carrying a rating of not less than A-VII in the most current A.M. Best's Insurance Rating Guide, – or otherwise acceptable to the District. Coverage under each of the required insurance policies shall, whether by endorsement or otherwise, provide that the coverage there under shall not be modified, cancelled or allowed to expire without at least thirty (30) days advance written notice to the District.

10.9.3. The District and its consultants shall be named as Additional Insureds to the Commercial Liability Insurance policy of the Design Professional and each of its Design Consultants for the Project. The District shall have the right to withhold any and all payments due Design Professional until the appropriate and complete Certificates of Insurance are provided.

10.10. **DSA Standards.** Design Professional understands and agrees that the Project will be subject to regulatory review and approval by the Division of the State Architect (DSA), and understands and agrees that a higher level of design drawings and construction are required to meet State of California school construction requirements. The Design

Professional shall manage, coordinate, and expedite when required, all necessary communications and meetings for timely resolution of all DSA issues and requirements to assist the Project Schedule and provide all timely required DSA documentation through and including close out of the Project. The Design Professional recognizes that due to state budgeting restrictions, DSA is understaffed and submissions to DSA may require substantial lead times, and should factor that in accordingly.

10.11. **Definitions.** Unless otherwise set forth in this Agreement, the following terms shall be as defined herein.

10.11.1. **Construction Contract.** The Contract for Construction awarded by the District to a Contractor for the construction the Project. The District may, in its sole and exclusive discretion award one or more Construction Contracts for construction of the Project; if the District elects to award one or more Construction Contracts for construction of the Project, references herein to “Construction Contract” shall refer to all Construction Contracts awarded by the District for the Project.

10.11.2. **Contractor.** The individual or entity awarded the Construction Contract by the District for the Project. If the District awards more than one Construction Contract for construction of the Project, references in this Agreement to the Contractor shall be deemed references to all Contractors awarded a Construction Contract for the Project.

10.11.3. **Design Documents.** The Drawings, Specifications, calculations and other work product prepared by the Design Professional or its Design Consultants for the Project or any portion thereof. Design Documents include Drawings, Specifications and other documents prepared by the Design Professional or a Design Consultant for the Project. As applicable by the context in which the term “Design Documents” is utilized, the term Design Documents includes the Design Documents prepared by or on behalf of the Design Professional during the Schematic Design, Design Development and Construction Documents Phases of this Agreement.

10.11.4. **Design Consultant(s).** Design Consultant(s) are individuals or entities retained by Design Professional to provide or perform a portion of the Design Professional’s services or work product hereunder, including any portion of the Design Documents. Design Consultants shall be duly licensed as required by law, rule or regulation and shall be qualified to perform or provide the portion of Design Professional’s services or work product assigned by having previously provided design consulting services for California public school project design and construction. Within seven (7) days of the signing of this Agreement by the Design Professional, the Design Professional shall submit a complete list of all Design Consultants it intends to utilize on this Project. The District shall have the right to reasonably disapprove a Design Consultant. Design Professional shall be responsible for the adequacy, timeliness and quality of services or work product provided or performed by Design Consultants and coordination of same; Design Professional shall be liable to District for, and shall defend, indemnify and hold harmless District and its Board of Trustees, employees, officers, agents and representatives from and against, all losses, costs, damages, liabilities, actions or demands arising out of the services or work product provided or performed by Design Consultants.

- 10.11.5. **Submittals.** Shop Drawings, Product Data or Samples prepared or provided by the Contractor or its Subcontractor(s) or supplier(s) illustrating some portion of the Work.
- 10.11.6. **Site.** The physical area for construction and related activities of the Project.
- 10.11.7. **Construction Cost Estimate.** Construction Cost Estimates are detailed estimates prepared by or on behalf of the Design Professional of the then current costs of labor, materials, equipment and services plus a reasonable allowance for the Contractor's profit, overhead and administrative costs as necessary to complete construction of the Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of Contractor bids for the Work of the Project and shall accurately estimate the full value of the Project scope included in the Project Construction Budget.
- 10.11.8. **Construction Contract Time.** The Construction Contract Time is the duration allowed under a Construction Contract awarded by the District for the Project for the Contractor to achieve Substantial Completion of construction of the Project.
- 10.11.9. **Construction Contract Price.** The Construction Contract Price is the Contract Price due from the District to a Contractor awarded a Construction Contract for the Project.
- 10.11.10. **Project Contract Price.** The Project Contract Price is the estimate of the total amount payable by the District to the Design Professional for the Basic Services of the Project.

11. PAYMENTS TO THE DESIGN PROFESSIONAL

- 11.1. Direct Personnel Expense. The Project Contract Price includes the Design Professional's Direct Personnel Expenses and related overhead costs. These are defined as the direct salaries of the Design Professional's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits, travel to and within San Francisco, San Mateo, Santa Clara, Contra Costa, and Alameda Counties, insurance and other overhead costs associated with or arising out of performance of basic Services for an Assigned Party, except for Reimbursable Expenses.
- 11.2. Payments on Account of Basic Services
 - 11.2.1. Design Professional Billings to District. During the course of providing basic Services, the Design Professional shall submit monthly billing invoices to the District for payment of the Contract Price for basic Services. Additional Services performed or incurred in the prior month shall not be billed for until receiving written authorization from the District or its representative. Design Professional's billings shall be in such form and format as may be reasonably requested by District, including without limitation, allocation of billings to pending Projects.
 - 11.2.2. District Payments to Design Professional. Within thirty (30) days of receipt of Design Professional's billing invoices, District will make payment to Design Professional of undisputed amounts of the Contract Price due for basic Services, and authorized Additional Services. No deductions will be made or withheld from payments due Design Professional hereunder on account of any

penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Contractor engaged by the District for Project construction. The District may, however, withhold or deduct from amounts otherwise due Design Professional hereunder if Design Professional 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 Design Professional has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting from the Design Professional's breach of contract, negligence, recklessness or willful misconduct. Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due Design Professional under any billing invoice rendered by Design Professional under this Agreement, pursuant to Civil Code §3320(a), the District may withhold from payment to the Design Professional an amount not to exceed 150% of the disputed amount. The District agrees to return disputed invoices within ten (10) days of that invoice with a clear description of the nature of the dispute. Undisputed amounts unpaid thirty (30) days after the issue date of the Design Professional's invoice shall be assessed interest in accordance with Civil Code §3320.

12. PROJECT CONTRACT PRICE & BASIS OF COMPENSATION

- 12.1. Compensation for Basic Services. The basis of payment for Basic Services, Additional Services, and Reimbursable Expenses shall be pursuant to Attachment E (Compensation) which sets forth the rates to be used in PAA for each Project.
- 12.2. Compensation for Additional Services. Compensation for the personnel of the Design Professional and Design Consultants performing authorized Additional Services shall be in accordance with the applicable provisions set forth in the PAA for each Project. All requests for Additional Services must be supported by employee time cards that show the exact hours worked and describe in sufficient detail the specific Additional Services performed on the particular Project.
- 12.3. Compensation for Reimbursable Expenses.
 - 12.3.1. Compensation. If compensation for services is authorized for a lump sum, compensation for Miscellaneous Expenses incurred in the interest of the Project shall be included in the compensation for services.
 - 12.3.2. Miscellaneous Expenses. Expenses include elements such as, but not limited to, travel, reproductions and computer plotting as needed for the Design Professional's contracted services and coordination, courier, telephone and FAX charges.
 - 12.3.3. Travel Costs: All travel expenses, including mileage, parking and bridge tolls incurred within 75 miles of the project site, Campus office(s), or the District's office are considered Miscellaneous Expenses and are included in the Design Professional's basic services and fees.
 - 12.3.4. Shipping- Delivery & Courier Services: All Project related expenses for the shipping, delivery or courier of Project related documents to the Design Professional's sub-consultants or to any Authorities Having Jurisdiction over the Project are included in the Design Professional's basic Services and fees.

- 12.3.5. Production & Reproduction Costs: Included in the Design Professional's compensation for basic Services are the costs associated with the production, reproduction and/or delivery of the following items:
- 12.3.5.1. Any required document, deliverable or presentation material specifically noted in this Agreement or any subsequent PAA.
 - 12.3.5.2. Any item, document or work product used to facilitate or coordinate design efforts between the Design Professional and its subconsultants.
 - 12.3.5.3. Color and Finish Boards as required in the Agreement.
 - 12.3.5.4. Design Phase deliverables to Owner at the Programming, Schematic, Design Development, Construction Drawings and Bid Documents phases (4 copies of full size paper plans and specifications and 2 copies on electronic storage devices in both native and .pdf file formats as requested by the District).
 - 12.3.5.5. Any and all documents required by Authorities having jurisdiction over the project including but not limited to:
 - Division of the State Architect
 - California Community College Office of the State Chancellor's Office
 - City, County or State Fire Marshal
 - California Department of Transportation
 - City (where college is located)
 - Santa Clara County
 - Bay Area Air Quality Management District
 - Any and all documents related to the coordination of design efforts between the Design Professional and any of its sub-consultants.
 - Bid amendments and addenda
 - Bulletins, supplemental instructions and design sketches
- 12.3.6. Reimbursable Expenses. The following reimbursable costs are not included in the lump sum compensation for basic Services and shall be reimbursed at cost plus a 10% charge for administration and overhead with a not-to-exceed amount of the total contract as noted in the PAA or the Request for Qualifications / Proposal.
- 12.3.7. Plan Check/Permit Fees: Fees paid to the Division of the State Architect or other Regulatory Agency.
- 12.3.8. District requested reproduction costs such as reproduction of Renderings or similar presentation materials not included in the Basic Services or provided for in the PAA, or expenses related to Agency review or during construction.
- 12.3.9. Costs associated with the reproduction or delivery of Plans and Specifications issued to bidders.
- 12.3.10. The reasonable expense of travel costs incurred by the Design Professional or its consultants when requested by the District to travel to a location more than 75 miles from either: the project site, Campus office(s), or the District's office, incurred in performing the Work.

13. INDEMNIFICATION

13.1. Design Professional Indemnity of District. To the fullest extent permitted by law, except to the extent caused in whole or in part by indemnitee, the Design Professional shall indemnify, defend and hold harmless the District and its employees, officers, Trustees, agents and representatives from any and all claims, demands, losses, responsibilities or liabilities for: (a) injury or death of Design Professional's or the Design Professional's Design Consultants' employees arising out of this Agreement; (b) injury or death of persons or damage to property, including the removal or replacement of any in-place work during or after Project Completion; or (c) other costs or charges, to the extent the liabilities, damages and losses are caused by willful misconduct, recklessness, or negligence, including concurrent negligence, of the Design Professional or Consultant of the Design Professional. The foregoing shall include without limitation, attorney's fees and costs incurred by the District, and shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable statute of limitations.

13.1.1. This indemnity agreement shall not be construed to limit the enforceability of other contractual provisions between the District and the Design Professional requiring cooperation with the District regarding any claim by a construction Contractor and any contractual requirement concerning participation in any court proceeding or arbitration.

13.1.2. It is the intent of the District that this indemnity agreement shall be in accordance with California Civil Code Section 2782.8 and is intended to apply to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional.

13.2. **Design Professional Reimbursement of District Attorney's Fees and Indemnify Payment.** The Design Professional shall immediately tender demand(s) for indemnity made by the District to its insurance carrier for a determination after the date of tender. At the conclusion of the underlying matter or claim for which indemnity is sought (through voluntary settlement, arbitration award, or court judgment), the Design Professional shall, pursuant to Civil Code §2782.8, reimburse the District for the settlement monies paid in proportion to determination of the Design Professional's proportional fault. Should the Design Professional and/or its insurance company fail or refuse to proportionally reimburse the District for: (a) its attorney's fees; or (b) indemnity paid, then either matter shall be submitted to binding arbitration for determination within 60 days, after failure or refusal to make payment to the District.

13.3. **Design Professional Bound to Arbitration by Other Claims.** In the event of any claim, arbitration demand filed on behalf of the Contractor or any Subcontractor in which design deficiencies, or errors, or Design Professional contract administration deficiencies are alleged as a basis for said claim, Design Professional agrees to participate as a party in any such arbitration or state court litigation, and shall further be bound as a party to any arbitration set forth or required under California Public Contract Code § 20104 for Contractor claims of \$375,000 or less.

13.4. **District Indemnify of Design Professional.** The District shall indemnify and hold harmless the Design Professional, its employees and consultants from all claims arising of bodily injury (including death) and physical damage (other than to the Project itself and property covered by insurance), but only to the extent that they arise out of the willful acts, omissions or other conduct of the District, and/or the sole negligence of the District.

IN WITNESS WHEREOF, the DISTRICT AND CONTRACTOR have caused this Master Agreement to be executed by their respective duly authorized representatives as follows.

| | |
|------------------------------|--|
| | Foothill-De Anza Community College District |
| “DESIGN PROFESSIONAL” | “DISTRICT” |
| By: _____ | By: _____ |
| <i>Authorized Signature</i> | <i>Authorized Signature</i> |
| Print Name: _____ | Print Name: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |
| Email: _____ | Address: 12345 El Monte Road |
| Tax I.D. Number: _____ | Los Altos Hills, CA 94022 |
| | Date* _____ |
| | Approved by Board of Trustees if applicable |

This Agreement is not valid until signed by both Parties above.

*Board approval is required prior to commencement of services if total cost exceeds the applicable bid threshold stated in the Public Contract Code Section 20651.

Attachment A – Schematic Design (SD) Criteria

In the Schematic Design Phase the Design Professional shall provide those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale and relationship of Project components for approval by the District. Designs will be conceptual in character and based on the requirements developed under previous phases [Pre-design, Site Analysis] and approved by the District, or on program requirements provided by the District and reviewed and agreed upon by the Design Professional. The following descriptions shall apply to those services assigned in the Schedule of Services as the responsibility of the party indicated therein.

1. Architectural Design/Documentation

These are Services during the Schematic Design Phase responding to program requirements and consisting of preparation of:

- 1.1. Conceptual site and building plans
 - Site plan should illustrate relationship between new and existing structures, traffic flow, existing and proposed topography, landscape features, roads, walks and major utility connections (typically @1 inch = 20 feet scale.)
 - Typical floor plans should be @1 inch = 16 feet scale.
 - Plans of special floors or areas @1 inch = 8 feet scale.
 - Roof plan @1 inch = 16 feet scale.
- 1.2. Preliminary sections and elevations (sketch form @ 1/6" or 1/8" scale.)
- 1.3. Preliminary selection of building systems and materials
 - Description of the Building envelope including wall systems, window types, glazing types.
- 1.4. Development of approximate dimensions, areas and volumes
- 1.5. Perspective sketch(es).
- 1.6. Study model(s)
- 1.7. Outline Specifications
- 1.8. Handicap requirements
- 1.9. Code Analysis - provide a written statement describing the methods proposed to comply with governing codes and regulations, including zoning, occupancy, life safety, fire resistance, fire protection and structural adequacy.
- 1.10. LEED Scorecard and description of sustainable design features for each prerequisite and credit included in the proposed design and plan for implementation.

2. Structural Design / Documentation

These are services during the Schematic Design Phase consisting of recommendations regarding basic structural materials and systems, analyses, and development of design solutions for:

- 2.1. A predetermined structural system w/design loads and criteria
- 2.2. Alternate structural systems

3. Mechanical Design / Documentation

These are services during the Schematic Design Phase consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:

- 3.1. Energy source(S)
- 3.2. Energy conservation
- 3.3. Heating and ventilating
- 3.4. Air conditioning
- 3.5. Plumbing
- 3.6. Fire protection
- 3.7. Special mechanical systems
- 3.8. Process systems
- 3.9. General space requirements
- 3.10. Basis of Design
- 3.11. Outline Specifications

4. Electrical Design / Documentation

These are services during the Schematic Design Phase consisting of consideration of alternate systems, recommendations regarding electrical materials, systems and equipment, analyses, and development of conceptual design solutions for:

- 4.1. Power service and distribution
- 4.2. Lighting
- 4.3. Telephones
- 4.4. Fire detection and alarms
- 4.5. Security systems
- 4.6. Electronic communications
- 4.7. Special electrical systems
- 4.8. General space requirements
- 4.9. Basis of Design
- 4.10. Outline Specifications

5. Civil Design / Documentation

These are services during the Schematic Design Phase consisting of consideration of alternate materials and systems and development of conceptual design solutions for:

- 5.1. On-site utility systems
- 5.2. Off-site utilities work
- 5.3. Fire protection systems
- 5.4. Drainage systems
- 5.5. Paving
- 5.6. Outline Specifications

6. Landscape Design / Documentation

These are services during the Schematic Design Phase consisting of consideration of alternate materials, systems and equipment and development of conceptual design solutions for land forms, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants.

7. Interior Design / Documentation

These are services during the Schematic Design Phase consisting of space allocation and utilization plans based on functional relationships, consideration of alternate materials, systems and equipment and development of conceptual design solutions for architectural, mechanical, electrical and equipment requirements in order to establish:

- 7.1. Partition locations
- 7.2. Furniture and equipment layouts
- 7.3. Description of finishes for typical areas, areas subject to heavy use or traffic, toilet areas, food service areas and any special finishes.

Attachment B - Design Development (DD) Criteria

Design Development Documents should consist of drawings and other documents to fix and describe the size and character of the entire Project, including architectural, structural, mechanical and electrical systems, materials, equipment and labor, safety and maintenance requirements, and energy conservation.

1. ARCHITECTURAL DESIGN / DOCUMENTATION

These services consist of continued development and expansion of architectural Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the entire Project through:

1.1. Plans, sections and elevations

1.1.1. 1/8" scale CADD (preferably) plans, including roof plan, with overall dimensions and column lines identified.

- Major elements such as entrances, elevators, toilet rooms, mechanical spaces and shafts located.
- Extent of basements (If any)
- Roof plan with mechanical penthouses or roof mounted equipment.

1.1.2. Key ACAD sections through the entire building indicating floor to floor height, ceiling height, relationship of windows and cladding, parapets, and relationship to finished grade.

- Illustrate floor relationships, construction thicknesses and profiles, vertical circulation and special features.

1.1.3. Minimum 1/8" scale, dimensioned ACAD elevations of all building facades indicating materials, systems and glazing types.

1.2. Typical construction details

1.2.1. Large scale, typical wall section(s) of each major type of wall treatment indicating basic flashing, wall composition and materials.

1.2.2. Typical window types and details.

1.2.3. Partition types and typical doors and frames including typical borrowed light conditions.

1.2.4. Typical stair construction and details.

1.2.5. Identification of any special conditions such as raised flooring, shielding requirements, automatic doors etc.

1.3. Three dimensional sketch(es) as furnished to the District

1.4. Study model(s) as prepared as a part of the project

1.5. Final materials selections

1.5.1. Identify all exterior materials

1.5.2. Interior finish schedule including ceiling heights for all major and typical spaces.

1.6. Equipment layouts

1.6.1. Special equipment types and locations

1.7. Other Information

1.7.1. Specifications -

- Draft front end and general conditions
- Draft technical sections or samples from similar jobs

1.7.2. Geotechnical Report

1.7.3. Code analysis review

1.7.4. Acoustical report (if applicable)

1.7.5. Updated program statement

1.7.6. Area/Volume statistics

1.7.7. Updated schedule

1.7.8. Updated LEED Scorecard

2. STRUCTURAL DESIGN / DOCUMENTATION

These are services during the Design Development Phase consisting of continued development of the specific structural system(s) and Schematic Design Documents In sufficient detail to establish:

2.1. Basic Structural System and Dimensions

2.1.1. Foundation system design

2.1.1.1. Sheeting & shoring requirements

- Scaled plan locating sheeting with typical details & elevations.
- Quantifiable tie-back criteria, if required.

2.1.1.2. Spread Footing I Mat Slab Design

- Scaled plan (1/8" preferred) indicating isolated footings, continuous footings, slabs on grade and foundation walls. Slab elevations and bottom of footing elevations noted.
- Schedule of isolated footings, by type, indicating size and reinforcing requirements.
- Typical continuous footing details indicating sizes and reinforcing requirements.

- Typical foundation wall & pier conditions indicating sizes & reinforcing requirements.
- Slab on grade details indicating thickness and reinforcing requirements.
- Waterproofing and foundation drainage requirements.

2.1.1.3. Pile / Caisson Design

- Scaled plan (1/8" preferred) indicating pile / caisson sizes & quantities, caps, grade beams, slabs on grade and foundations walls. Slab elevations and bottom of cap / grade beam elevations noted.
- Length of piles / caissons including amount of rock socketing.
- Type of piles with loading criteria.
- Pre-augering requirements noted.
- Casing requirements noted.
- Types and number of tests noted.
- Schedule of typical cap and grade beam designs indicating sizes and reinforcing requirements.
- Typical foundation wall & pier conditions indicating sizes & reinforcing requirements.
- Slab on grade details indicating thickness and reinforcing requirements.
- Waterproofing and foundation drainage requirements.

2.1.1.4. Slurry Wall Design

- Scaled plan (1/8" preferred) indicating slurry wall layout, slabs on grade and any additional foundation walls. Slab elevations and top of slurry wall elevations noted.
- Length of slurry wall including amount of rock socketing.
- Thickness of slurry wall with reinforcing requirements.
- Section showing guide wall requirements.
- Quantifiable tie-back criteria, if required.
- Types and number of tests noted.
- Typical foundation wall & pier conditions Indicating sizes & reinforcing requirements.
- Slab on grade details indicating thickness and reinforcing requirements.
- Waterproofing and foundation drainage requirements.

2.1.1.5. Special Foundation Systems

- Information similar to above allowing for adequate quantification & pricing.

2.1.2. Main Structural System Design

2.1.2.1. Steel Structural Systems

- Scaled plans (1/8" preferred) indicating layout of floor slabs, column lines piece type & sizes, moment connections and bracing locations. Slab elevations noted.
- Column criteria, preferably, a schedule with base & leveling plates.
- Bracing elevations with members sized.
- Girder & truss elevations with members sized.
- Criteria for curtain wall wind bracing loads and criteria for skylight Supports,
- Tie-rod & cable requirements.
- Typical connection details.
- Typical special connection detail (i.e., pipe conditions)
- Typical exterior wall sections / details.
- Typical framing @ floor & roof openings with quantity allowance.
- Typical beam opening details with quantity allowances.
- Allowances for slab depressions, equipment support, roof screen support, window washing anchorage, satellite dish support, etc.
- Slab locations, thickness and deck type / size.
- Type of deck closure relative to light gauge or bent plate material.
- Number of deck shear connectors noted.
- Spray fireproofing or concrete encasement criteria.
- Priming / painting criteria.

2.1.2.2. Cast-in Place Concrete Systems

- Scaled plans (1/8" preferred) indicating layout of floor slabs, openings, column lines, slab type & sizes and structural wall locations. Slab elevations noted.
- Column criteria, preferably, a schedule with sizes and reinforcing requirements.
- Structural wall, beams & column drop sections & details with reinforcing requirements.
- Structural girder sections & details with reinforcing requirements.
- Criteria for curtain wall wind bracing loads and criteria for skylight supports.
- Typical exterior wall sections / details.
- Typical reinforcing @ floor & roof openings with quantity allowance.
- Typical beam opening reinforcing with quantity allowances.
- Embed allowance requirements (i.e. Loading dock angles, sleeves, steel support plates, etc.)
- Slab placement criteria.
- Finishing & curing criteria.

2.1.2.3. Structural Precast Systems

- Scaled plans (1/8" preferred) indicating layout of floor slabs, openings, column lines, slab type & sizes and structural wall locations. Slab elevations noted.
- Column criteria, preferably, a schedule w/ sizes and reinforcing requirements.
- Structural floor, wall, beam sections & details with reinforcing requirements.
- Structural girder sections & details with reinforcing requirements.
- Stair element system - if precast.
- Criteria for curtain wall wind bracing loads and criteria for skylight supports,
- Typical exterior wall sections / details.
- Typical reinforcing @ floor & roof openings with quantity allowance.
- Typical beam opening reinforcing with quantity allowances.
- Embed allowance requirements (ie. Piece connections, loading dock angles, sleeves, steel support plates, etc.)
- Topping slab placement criteria.
- Finishing & curing criteria.
- Caulking criteria

2.1.2.4. Wood / Light Gauge Framing Systems

- Scaled plans (1/8" preferred) indicating layout of floor framing, openings, column lines and structural wall locations. Slab elevations noted.
- Wood species, sizes and rating requirements required for all framing elements.
- Metal stud and joist sizes and gauge.
- Typical connection details.
- Truss elevations.
- Typical exterior wall sections / details.

2.2. Final structural design criteria

2.2.1. Live load criteria should be finalized.

2.2.2. Dead loads criteria should be substantially established.

2.2.3. Wind load criteria should be finalized.

2.2.4. Special provisions for concentrated loads, openings & equipment loads should be substantially established.

2.2.5. Deflection & vibration control criteria should be established.

2.2.6. Thermal movement control should be established.

2.2.7. Subsurface waterproofing methods indicated.

2.3. Foundation design criteria

2.3.1. Soil bearing capacity.

2.3.2. Boring & test pit data.

2.3.2.1. Water table data.

2.3.2.2. Contaminated soil removal criteria.

2.3.2.3. Potential subsurface obstruction allowance established.

2.3.2.4. Potential rock / ledge removal.

2.4. Preliminary sizing of major structural components

2.4.1. Refer to this Attachment Section 2.1 'Basic Structural System and Dimensions' for requirements by systems type.

2.5. Critical coordination clearances

2.5.1. Sections at critical clearance areas with detailed dimensions.

2.6. Outline specifications or materials lists

2.6.1. Specifications are expected to indicate material and installation requirements by major structural components.

2.6.2. Typical (generic) specifications sections to be issued are as follows:

2.6.2.1. Earthwork

2.6.2.2. Cast-In-place Concrete

2.6.2.3. Structural Precast Concrete

2.6.2.4. Reinforcing

2.6.2.5. Structural Steel

2.6.2.6. Steel Joists

2.6.2.7. Metal Decking

2.6.2.8. Light Gauge Metal Framing

2.6.2.9. Metal Stairs & Railings

2.6.2.10. Rough Framing — Carpentry

2.6.2.11. Wood Trusses

3. MECHANICAL DESIGN / DOCUMENTATION

These services consist of continued development and expansion of mechanical Schematic Design Documents and development of outline specifications to establish:

3.1. HVAC System

3.1.1. Heating and cooling design load calculations

3.1.1.1. Approximate equipment sizes and capacities

3.1.2. Preliminary equipment layouts

3.1.2.1. Size, Location and routing of major ductwork

3.1.2.2. Single line diagram of branch ductwork, with sizes and capacities, piping diagrams, identify heating zones, VAV boxes etc.

3.1.3. Equipment schedule with sizes and capacities

3.1.4. Required space for equipment

3.1.5. Required chases and clearances

3.1.6. Acoustical and vibration control

3.1.7. Visual impacts

3.1.8. Energy conservation measures

3.1.8.1. Temperature control system description

3.2. Plumbing

3.2.1. Locate all plumbing fixtures including roof drains

3.2.2. Specify pipe, fixture and equipment materials

3.2.3. Locate floor drains

3.2.4. Provide sanitary and storm system riser diagrams

3.3. Fire Protection System

3.3.1. Identify fire pump requirements and size

3.3.2. Specify sprinkler system types (dry and wet)

3.3.3. Specify sprinkler head type (concealed, semi-recessed, exposed)

4. ELECTRICAL DESIGN / DOCUMENTATION

These services consist of continued development and expansion of electrical Schematic Design Documents and development of outline specifications or materials lists to establish:

4.1. Criteria for lighting, electrical and Communications systems

4.1.1. Preliminary, typical light fixture layout

4.1.2. Identify telephone, data and duplex requirements

4.2. Approximate sizes and capacities of major components

4.2.1. Specify emergency generator requirements and quantity and size of auto transfer switches

4.3. Preliminary equipment layouts

4.3.1. Provide panel and equipment schedule

4.3.2. Specify data technology system

4.4. Required space for equipment

4.5. Required chases and clearances

4.5.1. Provide one-line, riser diagram

5. CIVIL DESIGN / DOCUMENTATION

These services consist of continued development and expansion of civil Schematic Design Documents and development of outline specifications or materials lists to establish the final scope and preliminary details for on-site and off-site civil engineering work.

5.1. Site Plan showing buildings, paving walls, curbs, retaining walls and property lines.

5.1.1. Site lighting layout

5.2. Boring information

5.3. Typical sections through paving, walkways and curbs

5.4. Site drainage pattern and location of utilities and points from which services will be run to the building.

5.4.1. Indicate all underground utilities and services (sized and prosited), existing and proposed.

6. LANDSCAPE DESIGN / DOCUMENTATION

These services consist of continued development and expansion of landscape Schematic Design Documents and development of outline specifications or materials lists to establish the final scope and preliminary details for landscape work.

6.1. Landscape plan showing types and quantities of planting

6.2. Plans showing existing grades in relation to finish grades

6.3. Parking layouts

7. INTERIOR DESIGN / DOCUMENTATION

These are services during the Design Development Phase consisting of continued development and expansion of interior Schematic Design Documents and development of outline specifications or materials lists to establish the final scope and preliminary details relative to:

7.1. Interior construction of the Project

- 7.1.1. Floor plans and reflective ceiling plans drawn to 1/8" scale.
- 7.1.2. Partition types indicated and noted on plans.
- 7.1.3. Door & frame types designed and noted on schedule.
- 7.1.4. Any additional secondary framing requirements noted. (i.e. mezzanines, stages, stairs, ramps, etc.)
- 7.1.5. Interior railings indicated in plan and elevation with typical detail.
- 7.1.6. Typical interior details noted.

7.2. Special Interior design features

- 7.2.1. Large scaled plans, elevations & sections drawn for feature design elements.
- 7.2.2. Decorative flooring & ceiling patterns/ elements indicated.

7.3. Furniture, furnishings and equipment selections

- 7.3.1. Casework, millwork indicated in plan and elevation with typical details.
- 7.3.2. Equipment requirements indicated on plans.
- 7.3.3. Equipment schedules (i.e. Food service, laboratory equipment, etc.)
- 7.3.4. Note new versus existing to be re-used and any modifications necessary to adapt to new locations.

7.4. Materials and finishes and colors

- 7.4.1. Interior finishes schedule for floors, walls, ceilings & base requirements.
- 7.4.2. Door & frame schedule.
- 7.4.3. Hardware schedule or hardware sets.

Attachment C - Construction Documents (CD) Criteria

The Construction Document Phase shall consist of Drawings, Specifications and other documents setting forth in detail the construction requirements, bidding and contracting for the construction of the project based on approved Design Development Documents:

1. ARCHITECTURAL DESIGN / DOCUMENTATION

The services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Architectural construction requirements for the project. Included with the detail but not limited to:

- 1.1. Floor Plans for each floor indicating:
 - 1.1.1. Spaces fully articulated, detailed, labeled, dimensioned and numbered.
 - 1.1.2. Material finishes identified.
 - 1.1.3. Doors numbered and hardware sets shown / scheduled.
 - 1.1.4. Built-in furniture.
- 1.2. Architectural drawings shall be coordinated with the structural, mechanical and electrical drawings as well as the project specifications.

2. STRUCTURAL DESIGN / DOCUMENTATION

These services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Structural construction requirements for the project.

3. MECHANICAL DESIGN / DOCUMENTATION

These services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Mechanical construction requirements for the project.

4. ELECTRICAL DESIGN / DOCUMENTATION

These services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Electrical construction requirements for the project.

5. CIVIL DESIGN / DOCUMENTATION

These services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Civil construction requirements for the project.

6. LANDSCAPE DESIGN / DOCUMENTATION

These services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Landscape construction requirements for the project.

7. INTERIOR DESIGN / DOCUMENTATION

These services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Interior Design requirements for the project.

8. DEVELOPMENT and PREPARATION OF THE PROJECT SPECIFICATIONS

These services describe materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.

9. CALCULATIONS DETERMINING DESIGN ELEMENTS

These services include the Drawings and Specifications, including structural, mechanical, electrical and other calculations confirming compliance with code-mandated or programmed requirements.

Attachment D - Estimating Standards

The Foothill De Anza Community College District Construction Program uses a standard estimating format for which all estimates shall comply. The purpose is to:

- Provide consistency between estimates prepared by different entities (e.g. Design Professional, Program Manager, Construction Manager, School Construction).
- Ensure that quantities of material developed or assumed by different estimators are consistent.
- Ensure that assumptions, exclusions, and inclusions considered by estimators are consistent with the intent of the Design Professional.
- Ensure that contingencies for design, construction and escalation assumed by different estimators are consistent.

1. ESTIMATE FORMAT

- 1.1. Provide a cover sheet matching the format of the District's budget.
- 1.2. Prepare all estimates in "present day" dollars and present the cost anticipated at time of construction, as described in item 4.
- 1.3. All plan sheets must contain the following information:
 - 1.3.1. Project Name
 - 1.3.2. Design Professional's Name
 - 1.3.3. The document date
 - 1.3.4. Sheet number
 - 1.3.5. Name of the Estimator – all estimates to be prepared by American Society of Professional Estimator (ASPE) certified estimator.
 - 1.3.6. Type of estimate (i.e. Conceptual, Schematic, Design Development or Construction Document)
- 1.4. Break down costs as follows:
 - 1.4.1. Cost in present day dollars
 - Trade costs for complete project
 - Taxes Included and Excluded
 - General Conditions
 - Overhead and profit
 - Allowances for LEED Certification if applicable
 - Allowances for special features (if not well defined)
 - Design Contingency as a % (check w/ Program Manager)
 - TOTAL present day cost
 - 1.4.2. Construction Budget
 - Multiply total present day cost times a yearly escalation factor to determine Construction Budget as defined in Agreement Section 6.2 'Project Construction Budget'. Escalation factor and construction schedule to be agreed upon by the Design Professional and District.
 - TOTAL Construction Budget
 - 1.4.3. Other Costs
 - Programmed equipment and work outside Project scope (if any)
 - Sub Total
 - Construction Contingency (5% - Check w/ Program Manager)
 - ESTIMATE TOTAL

- 1.5. Present the Estimate Summary in CSI (Construction Specifications Institute) Format used in preparation of the Project specifications. Identify major items of work within each division.
- 1.6. If Project includes renovation and addition, provide estimates for each separately. Both estimates must be prepared using the same format with quantities, unit, unit price, and the total.
- 1.7. Provide back-up sheets for each division of work to include the basic information of: Description, Quantities, Unit, Unit Price, Total.
- 1.8. Summarize the total cost for each division.
- 1.9. List project gross and assignable areas as defined in plans and Specifications and broken down by renovation versus new construction.
- 1.10. List assumptions and clarifications.
- 1.11. List allowances with descriptions, units and values.
- 1.12. List exclusions.

Attachment E - Compensation

1. COMPENSATION

Design Professional shall be compensated for actual hours incurred in providing services pursuant to a Project Assignment Amendment (PAA).

2. INVOICES AND PAYMENTS

- 2.1. During the course of providing services, Design Professional shall submit monthly billing invoices to the District for payment of the services pursuant to the Approved Service Order. Design Professional's billings shall be in such form and format as may be reasonably requested by the District and shall be specific to project and/or Approved Service Order.
- 2.2. Within thirty (30) days of receipt of an approved and complete Design Professional's invoice, the District will make payment to the Design Professional of undisputed amounts of the Approved Service Order.
- 2.3. The District may, withhold or deduct from amounts otherwise due Design Professional hereunder if Design Professional 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 Design Professional has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting there from.

3. SCHEDULE OF RATES

Attachment F - Project Assignment Amendment (PAA)

The District and Design Professional will implement this PAA in accordance with the Master Agreement.

1. PROJECT SUMMARY

1.1. Project Information

| | |
|---------------------------|--|
| PAA No. | |
| Project Name ("Project"): | |
| Project Location: | |
| PAA Term: | |

1.2. Change Order No ____ : (if applicable)

| | |
|--|----|
| Original PAA Amount: | \$ |
| Previous Change Orders(+/-): | \$ |
| Total cost of this Change Order (+/-): | \$ |
| New PAA Total: | \$ |

All general terms and conditions of the Master Agreement and previous Change Orders not expressly modified by this Change Order shall remain unchanged and in full force and effect.

2. PAA Tasks

The Design Professional shall provide all services and deliverables set forth to the Director's satisfaction.

2.1. General Description of PAA

[Insert a general project description to provide context for the tasks.]

2.2. Task No. 1

| | |
|------------------|--|
| Services: | <i>[Insert a description of the services required to perform or develop the deliverable.]</i> |
| Deliverables: | <i>[Insert a description of the deliverable.]</i> |
| Completion Time: | <p><i>The Design Professional must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:</i></p> <p>On or before the following date: _____</p> <p>On or before ____ Business Days from _____</p> |

2.3. TASK NO. 2

| | |
|------------------|--|
| Services: | <i>[Insert a description of the services required to perform or develop the deliverable.]</i> |
| Deliverables: | <i>[Insert a description of the deliverable.]</i> |
| Completion Time: | <p><i>The Design Professional must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:</i></p> <p>On or before the following date: _____</p> <p>On or before ____ Business Days from _____</p> |

2.4. TASK NO. 3

| | |
|------------------|--|
| Services: | <i>[Insert a description of the services required to perform or develop the deliverable.]</i> |
| Deliverables: | <i>[Insert a description of the deliverable.]</i> |
| Completion Time: | <p><i>The Design Professional must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:</i></p> <p>On or before the following date: _____</p> <p>On or before ____ Business Days from _____</p> |

3. PAA Staffing Plan

3.1. District's Contract Manager

The District's contract manager for this PAA is:

| | |
|-------------|--|
| Name: | |
| Department: | |
| Address: | |
| Phone No. | |
| E-mail: | |

3.2. Design Professional's Contract Manager and Other Staffing

3.2.1. Contract Manager

The Design Professional's contract manager for this PAA, will be principally responsible for providing the services and deliverables.

| | |
|-----------|--|
| Name: | |
| Address: | |
| Phone No. | |
| E-mail: | |

3.2.2. Other Staffing

| | Name: | Assignment |
|----|-------|------------|
| 1. | | |
| 2. | | |
| 3. | | |

3.2.3. Subcontractors (if applicable):

| | Subcontractor Name: | Area of Work | Assigned Staff Name | Assignment |
|----|---------------------|--------------|---------------------|------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |

3.2.4. Contract Personnel (if applicable):

| | Agency Name | Area of Work | Assigned Staff Name | Assignment |
|----|-------------|--------------|---------------------|------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |

4. PAA Compensation

The District will compensate the Design Professional for providing the services and deliverables set forth in this Attachment F Section 2 (PAA Tasks) in accordance with the Compensation Table below which is subject to the terms and conditions set forth in the Master Agreement including without limitation Section 12 and Attachment E – Compensation.

| Task No. and Task Title from Section 2 above | Invoice Period | Billing Rate X Hours | Compensation |
|--|---|----------------------|--------------|
| | <input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work | | \$ |
| | <input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work | | \$ |
| | <input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work | | \$ |
| | <input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work | | \$ |
| Maximum Compensation | | | \$ |

5. PAA Staffing Change Approval Form

During the course of performance of services, the District may request replacement of a Design Professional employee or a proposed employee, provided that there is reasonable cause.

5.1. Request From District:

| | |
|------------------------|--|
| Name: | |
| Title/Department Name: | |

5.2. Type of Change Requested

[Select whichever of the following applies. Be sure to delete the sections that are not used. Remove highlighting from form after completing]

5.2.1. REMOVE STAFF

| | | |
|------------------|-----------------|--|
| PAA# | Position Title: | |
| Full Name: | | |
| Last Day of Work | | |

5.2.2. ADD or REPLACE STAFF

| | | |
|---|---|--|
| PAA # | Position Title: | |
| Full Name: | | |
| Commence Work (Start Date) | | |
| If replacing staff, indicate name of previous incumbent in this position <i>(otherwise delete)</i> | _____ replaces _____ in this position. _____'s last day of work will be _____. | |
| | <ul style="list-style-type: none"> • _____'s actual hourly salary rate for the duration of the PAA# will be \$_____/hour. • This proposal will not change the budget and schedule approved for this task. | |

6. APPROVALS:

"Design Professional"

By: _____
Authorized Signature

Print Name:

Title:

Date: _____

Foothill-De Anza Community College District
"District"

By: _____
Authorized Signature

Print Name: Joel Cadiz

Title: Executive Director, Facilities & Operations

Date: _____

By: _____
Authorized Signature

Print Name: Susan Cheu

Title: Vice Chancellor, Business Services

Date: _____

Date* _____

**Approved by Board of Trustees if applicable*

This contract is not valid until signed by both parties above and approved by the Board of Trustees if the total cost including changes exceeds \$96,700 (2021 limit).

**Project Assignment Amendment (PAA) to Master Agreement between
Foothill De Anza Community College District and**

dated _____.

The District and Design Professional will implement this PAA in accordance with the Master Agreement.

1. PROJECT SUMMARY

1.1. Project Information

| | |
|---------------------------|--|
| PAA No. | |
| Project Name ("Project"): | |
| Project Location: | |
| PAA Term: | |

1.2. Change Order No _____ : (if applicable)

| | |
|--|----|
| Original PAA Amount: | \$ |
| Previous Change Orders(+/-): | \$ |
| Total cost of this Change Order (+/-): | \$ |
| New PAA Total: | \$ |

All general terms and conditions of the Master Agreement and previous Change Orders not expressly modified by this Change Order shall remain unchanged and in full force and effect.

2. PAA Tasks

The Design Professional shall provide all services and deliverables set forth to the Director's satisfaction.

2.1. General Description of PAA

[Insert a general project description to provide context for the tasks.]

2.2. Task No. 1: _____

| | |
|------------------|--|
| Services: | <i>[Insert a description of the services required to perform or develop the deliverable.]</i> |
| Deliverables: | <i>[Insert a description of the deliverable.]</i> |
| Completion Time: | <p><i>The Design Professional must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:</i></p> <p>On or before the following date: _____</p> <p>On or before ____ Business Days from _____</p> |

2.3. TASK NO. 2: _____

| | |
|------------------|--|
| Services: | <i>[Insert a description of the services required to perform or develop the deliverable.]</i> |
| Deliverables: | <i>[Insert a description of the deliverable.]</i> |
| Completion Time: | <p><i>The Design Professional must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:</i></p> <p>On or before the following date: _____</p> <p>On or before ____ Business Days from _____</p> |

2.4. TASK NO. 3: _____

| | |
|------------------|--|
| Services: | <i>[Insert a description of the services required to perform or develop the deliverable.]</i> |
| Deliverables: | <i>[Insert a description of the deliverable.]</i> |
| Completion Time: | <p><i>The Design Professional must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:</i></p> <p>On or before the following date: _____</p> <p>On or before ____ Business Days from _____</p> |

3. PAA Staffing Plan

3.1. District’s Contract Manager

The District’s contract manager for this PAA is:

| | |
|-------------|--|
| Name: | |
| Department: | |
| Address: | |
| Phone No. | |
| E-mail: | |

3.2. Design Professional’s Contract Manager and Other Staffing

3.2.1. Contract Manager

The Design Professional’s contract manager for this PAA, will be principally responsible for providing the services and deliverables.

| | |
|-----------|--|
| Name: | |
| Address: | |
| Phone No. | |
| E-mail: | |

3.2.2. Other Staffing

| | Name: | Assignment |
|----|-------|------------|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |

3.2.3. Subcontractors (if applicable):

| | Subcontractor Name: | Area of Work | Assigned Staff Name | Assignment |
|----|---------------------|--------------|---------------------|------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |

3.2.4. Contract Personnel (if applicable):

| | Agency Name | Area of Work | Assigned Staff Name | Assignment |
|----|-------------|--------------|---------------------|------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |

4. PAA Compensation

The District will compensate the Design Professional for providing the services and deliverables set forth in this Attachment F Section 2 (PAA Tasks) in accordance with the Compensation Table below which is subject to the terms and conditions set forth in the Master Agreement, including without limitation Section 12 and Attachment E – Compensation.

| Task No. and Task Title from Section 2 above | Invoice Period | Billing Rate X Hours | Compensation |
|--|---|----------------------|--------------|
| | <input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work | | \$ |
| | <input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work | | \$ |
| | <input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work | | \$ |
| | <input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work | | \$ |
| Maximum Compensation | | | \$ |

5. PAA Staffing Change Approval Form

During the course of performance of services, the District may request replacement of a Design Professional employee or a proposed employee, provided that there is reasonable cause.

5.1. Request From District:

| | |
|------------------------|--|
| Name: | |
| Title/Department Name: | |

5.2. Type of Change Requested

[Select whichever of the following applies. Be sure to delete the sections that are not used. Remove highlighting from form after completing]

5.2.1. REMOVE STAFF

| | | |
|------------------|-----------------|--|
| PAA# | Position Title: | |
| Full Name: | | |
| Last Day of Work | | |

5.2.2. ADD or REPLACE STAFF

| | | |
|---|---|--|
| PAA # | Position Title: | |
| Full Name: | | |
| Commence Work (Start Date) | | |
| If replacing staff, indicate name of previous incumbent in this position <i>(otherwise delete)</i> | _____ replaces _____ in this position. _____'s last day of work will be _____. | |
| | <ul style="list-style-type: none"> • _____'s actual hourly salary rate for the duration of the PAA# will be \$_____/hour. • This proposal will not change the budget and schedule approved for this task. | |

6. APPROVALS:

"Design Professional"

By: _____
Authorized Signature

Print Name:

Title:

Date: _____

Foothill-De Anza Community College District
"District"

By: _____
Authorized Signature

Print Name:

Title: Executive Director, Facilities & Operations

Date: _____

By: _____
Authorized Signature

Print Name:

Title: Vice Chancellor, Business Services

Date: _____

Date* _____

**Approved by Board of Trustees if applicable*

This contract is not valid until signed by both parties above and approved by the Board of Trustees if the total cost including changes exceeds \$109,300 (2023 limit).

Foothill - De Anza Community College District

INDEPENDENT CONTRACTOR AGREEMENT
FOR TRANSPORTATION SERVICES

De Anza College Foothill College Middlefield Campus Foothill-De Anza Foundation

This Agreement entered into this ___ day of ___, 2___ is made between the Foothill-De Anza Community College District, hereinafter referred to as the "DISTRICT", and the following named independent contractor; hereinafter referred to as the "CONTRACTOR", based upon Board Policies BP 3140, BP3143, AP 3140, and AP3143 and the following legal citations:

- A. Government Code Section 53060 authorizes the engagement of persons to perform special services as independent contractors; and
B. Public Contract Code 20651 requires advertised sealed bids for public projects of \$15,000 or more and most other services of \$88,300 or more. If sealed bids are required, this form of agreement cannot be used;
C. Government Code Section 8546.7 provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.
D. The public interest, convenience, necessity and general welfare will be served by this Agreement.

If this agreement has a total cost that exceeds \$20,000, it is not valid and services shall not commence unless and until the Board of Trustees grants approval.

1. CONTRACTOR INFORMATION:

Contractor's Name _____

Address _____ City/County _____ a Zip _____

Business Phone _____ Fax No _____ Home _____

Social Security Number (last four) _____ *Fed. Tax I.D. Number _____

*CONTRACTOR MUST PROVIDE W-9

Business License Number _____

Are you a current or former employee of the DISTRICT? Yes [] No []

If yes, date last worked _____

If yes, specify last work location _____

Work Assignment _____

Are you related to any employee(s) in the DISTRICT? Yes [] No []

If yes, please identify the individual(s) _____

2. CONTRACTOR SELECTION PROCESS:

Describe how you selected this contractor and why this contractor is the best source for these services. Board Administrative Procedure 3140 requires at least three written competitive quotations for public projects greater than \$1000 and other purchases greater than \$10,000. If you did not obtain competitive quotes, provide justification. Advertised competitive bidding by District Purchasing Services is legally mandated for most services in excess of the bid threshold (currently \$88,300) and for all public projects of \$15,000 or more pursuant to Public Contract Code 20651

3. CONTRACTOR SERVICES, FEE, AND CONTRACT STARTING AND ENDING DATES:

A. Description of services to be provided by contractor (**refer to and attach contractor's signed proposal or quotation**):

Instructions: Reference and attach an Exhibit "A" for each additional trip that will be provided by the contractor (See page 5 of this form).

| | |
|----------------------------|--|
| Trip #: 1 of ____ | |
| Trip Description: | |
| Bus Quantity: | |
| Passenger Total: | |
| Departure Date: | |
| Departure Time: | |
| Departure Location: | |
| Destination: | |
| Return Date: | |
| Return Time | |
| Return Location: | |
| Trip Cost: | |
| Special Requests: | |

B. Grand total of all trip costs (i.e. the sum of all Exhibit "A" trip costs) : \$ _____

C. Contract Starting Date _____ Contract Ending Date _____

Note: It is not permissible to split the contracted services into two or more contracts within one fiscal year for the purpose of avoiding the requirement for Board of Trustees approval.

4. CERTIFICATE OF INSURANCE: The campus requester must obtain certificate(s) of insurance that comply with paragraph 6C, have them reviewed and signed by the District Risk Manager and attached to the signed ICA.

5. PAYMENT TERMS: Unless other payment terms are specified in this section, payment terms are Net 30 days computed either from the date of delivery and acceptance of the contract services or from the date of receipt of correct and proper invoices prepared in accordance with the terms of the contract, whichever date is later.

6. STANDARD TERMS AND CONDITIONS:

- A. CONTRACTOR is solely responsible for the content and sequence of the work. DISTRICT will not provide any training or instruction to CONTRACTOR or its employees.
- B. CONTRACTOR shall indemnify, defend and hold the DISTRICT, its Board of Trustees, officers, agents and employees harmless from any and all claims, damages, losses, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of CONTRACTOR'S performance of the work contemplated by this Agreement. Acceptance of this Agreement constitutes that the CONTRACTOR is not covered under the DISTRICT'S automobile liability general liability insurance, employee benefits or worker's compensation. It further establishes that the CONTRACTOR shall be fully responsible for contractor's coverage.
- C. **Contractor shall not commence work under this Agreement until required insurance has been approved in writing by District. Certificates of insurance, in form and with insurers acceptable to District (A.M. Best rating of A-VII or better or otherwise approved by District Risk Manager) shall be submitted to District Risk Management Department. Such certificate shall evidence all coverage and limits required by District in this Agreement and shall specify that insurers will give District thirty (30) days prior written notice of non-renewal or cancellation.**

Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:

1. Workers' Compensation (statutory limits) and Employers' Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 employee and \$1,000,000 each disease, provided that contractor has employees as defined by the California Labor Code;
2. Commercial General Liability insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury and Property Damage, including coverage for contractual liability, personal injury, broad form property damage, independent contractors, products and completed operations;
3. Commercial Automobile Liability insurance with limits not less than \$5,000,000 each occurrence and \$10,000,000 aggregate for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired vehicles, as applicable;

General and Automobile liability policies shall include an Additional Insured Endorsement which shall read: the Foothill-De Anza Community College District, members of the Board of Trustees of the District, its officers, agents, employees and servants of the District, individually and collectively, as additional insured's. This insurance shall be primary and Non-Contributory to any other insurance or self-insurance available to the Additional Insured's and shall apply separately to each, except the inclusion of Additional Insured's shall not operate to increase the required limits of such insurance.

Maintenance of the required insurance is a material condition of this Agreement and failure to maintain such insurance may, at the District's option, result in a declaration of material breach and suspension of Contractor's further work under this Agreement.

- D. The CONTRACTOR shall assume all expenses incurred in connection with the performance of this contract and the DISTRICT shall not be responsible for payment of any other expenses. The payment terms specified in Paragraph 3 above, unless otherwise indicated and agreed to in writing by the CONTRACTOR and the DISTRICT, shall be the only obligation of the DISTRICT. While engaged in carrying out and complying with any of the terms and conditions of this Agreement, CONTRACTOR is not entitled to any right or privilege applicable to an officer or employee of the DISTRICT or of the State of California.
- E. Payments to the CONTRACTOR pursuant to this Agreement will be reported to Federal and State taxing authorities as required. DISTRICT will not withhold any sums from compensation payable to CONTRACTOR. CONTRACTOR is independently responsible for the payment of all applicable taxes. An IRS form 1099 will be provided to the CONTRACTOR at the end of the calendar year.

- F. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations of warranties, expressed or implied, not specified in this Agreement. This Agreement applies only to the current proposal as attached. Modification or termination of this contract requires mutual agreement by both parties.
- G. The District may terminate this contract at any time for any reason by providing 30 days notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Contractor shall be paid for all work provided to the date of termination.
- H. The parties to the Agreement, under penalty of perjury, hereby certify that all of the above items and attachments are to the best of their knowledge true and correct statements.

AGREEMENT OF CONTRACTOR: I agree to perform the services described above for the payment indicated. I understand that while performing contract services I am not an employee of the Foothill-De Anza Community College District because I follow an independent trade or profession, and will not be subject to control and direction as to the details and means for accomplishing the anticipated result of my service.

Contractor _____
Date
Print Name _____

APPROVED:

By signing below, the signatories certifies that:

- They have reviewed the appropriate legal and procedural guidelines pertinent to determination of independent contractor status, including IRS Revenue Ruling 87-41, have analyzed their application to the position described on the accompanying documents, and have concluded that the hiring of the subject individual to perform the functions described does indeed constitute correct and legal independent contractor status.
- The contractor's current and valid insurance certificate(s) has been reviewed, approved by the District's and signed by the District's Risk Manager.

Authorized College/District Requestor/Budgeter _____
Date

College/District Employee with Authority to Sign Contract _____
Date

Date Approved by Board of Trustees.
[Required prior to commencement of services if the total cost exceeds \$20,000.]

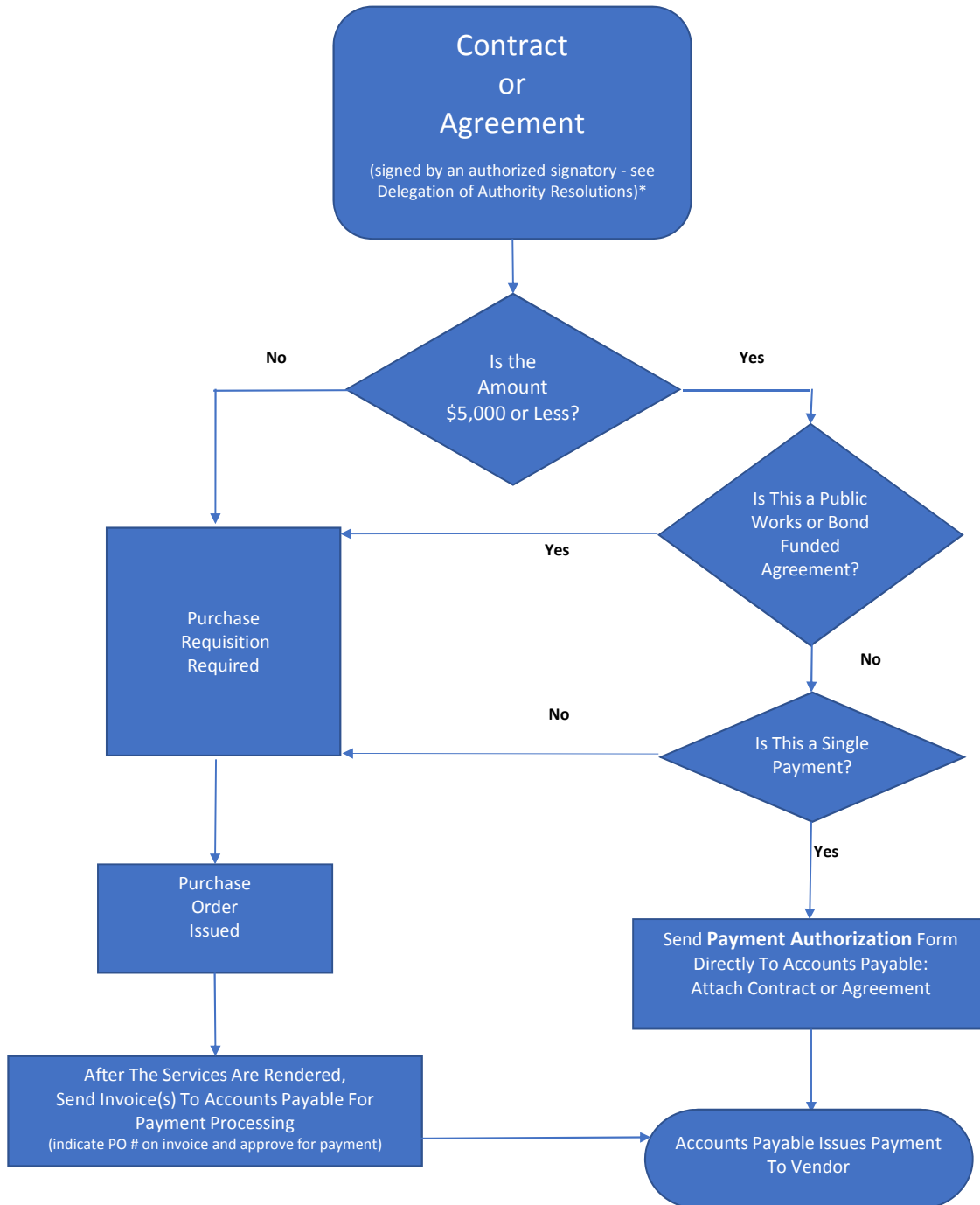
Foothill – De Anza Community College District
Transportation Services
Exhibit “A”

Contract between Foothill – De Anza Community College District and _____
 _____, hereinafter called “contractor”.

Instructions: Reference and attach an Exhibit “A” for each additional trip that will be provided by the contractor.

| | |
|----------------------------|--|
| Trip #: ___ of ___ | |
| Trip Description: | |
| Bus Quantity: | |
| Passenger Total: | |
| Departure Date: | |
| Departure Time: | |
| Departure Location: | |
| Destination: | |
| Return Date: | |
| Return Time | |
| Return Location: | |
| Trip Cost: | |
| Special Requests: | |

Agreements \$5,000 and Under Payment Process Flowchart



* <http://purchasing.fhda.edu/procedures-policies-and-laws/index.html>

Foothill-De Anza Community College District

GUIDELINES:

Subject: Determination of Independent Contractor Status

PURPOSE:

To provide guidelines for determining employee status for persons hired by the District as "consultants" or "independent contractors" and restraints of performing service as consultants and independent contractors; and to provide guidelines for reporting of such service.

DEFINITIONS:

Independent Contractor:

The definition as specified in California Labor Code Section 3353: "Independent Contractor means any person who renders service for a specified recompense, for a specified result, under the control of a principal as to the result of a work only, and not as to the means by which such result is accomplished."

An Independent Contractor works independently, normally contracting to receive a set fee for completing a specific scope of work within a specific period of time. An Independent Contractor is not an employee, and such an arrangement must not be used to circumvent employment procedures.

Employee:

Under IRS Common Law Rule guidelines, a worker is an employee if the employer has the right to control not only who performs the job, but also the tools and supplies to be used, what is to be done, how it is to be done, where it is to be done, and when it is to be done. This is true regardless of the duration of the job or certainty of funding to support the job.

GUIDELINES:

Basic Rule:

Individuals hired to perform services for the District should be considered employees except in rare circumstances.

Determination of Employee vs. Independent Contractor status.

Major criteria for determination of employee status would be **a) usual availability** in the community of individuals performing those services, or **b) the usual employment status** of individuals who would normally perform those services for the District.

If persons performing the services under consideration are usually available in the community, then the person hired to perform the services should be hired as an employee. Or, if the usual employment status of individuals normally performing those services for the District is that of an employee, the person hired into the position is an employee.

IRS Publication SWR 40, *Public Schools and Employment Taxes*, lists workers that have already been determined by IRS to be employees. These are individuals performing the duties of:

| | |
|--|--|
| Administrators | Nurses |
| Athletic Coaches | Proctors |
| Cafeteria Workers | Psychologists |
| Clerical Staff | School Bus Drivers |
| Counselors | Specialty Teachers (art, poetry, etc.) |
| Examination Monitors | Substitutes |
| Individuals "filling in" on an interim basis | Teachers/Instructors |
| Intern Psychologists | Tutors |
| Librarians | |

The California State Employment Development Department, the Internal Revenue Service, and the Social Security Administration observe the "Common-Law Rule", (see District Pre-Hire Worksheet) in determining employee status. Employers and employees alike should also refer to this document for guidance in establishment of positions and in hiring.



Standard Instructions and Conditions for Invitations to Bid (ITBs), Requests for Proposals (RFPs), Requests for Quotations (RFQs), Purchase Orders (POs), and Contracts

To the extent that any standard instruction or condition set forth below conflicts with instructions, conditions, or terms specified in any other area of this ITB, RFP, RFQ, PO, or Contract, the language in the other area of the ITB, RFP, RFQ, PO, or Contract shall prevail.

Note: The reference to “Bids” in the following paragraphs applies to submittals in response to ITBs, RFPs, and RFQs; and the reference to “Contracts” includes Purchase Orders (POs) and Agreements. The term “Vendor” shall include “Contractor.”

SECTION I Applicable to Bids only.

1. PREPARATION OF BIDS:

- 1.1. Electronic Submission. The District requires that quotes be submitted electronically on the PlanetBids e-procurement system at <https://pbsystem.planetbids.com/portal/24809/portal-home>.
 - 1.1.1. All bids are secure and may not be accessed until the date and time indicated in this RFQ. Bidders may modify or withdraw any quote prior to the bid close. It is the sole responsibility of the Bidder to ensure its quote is submitted before the closing date and time and the District is not responsible for any late or incomplete submissions due to any technical issues that may be encountered on the website. There is no cost to the Bidder to register, receive or submit electronic quotes using PlanetBids.
- 1.2. Paper Bids. All prices and notations must be printed in ink or typewritten. No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten nearby and must be initialed in ink by person signing the Bid.
- 1.3. Brand names and numbers are for reference only unless otherwise stated in the specification. Whenever an item is described by using a brand/trade name of a manufacturer and/or model number it is intended that the words, “or equal” apply. “Or Equal” means any other brand that is equal or equivalent to the named brand in meeting the specific operational design, performance, maintenance, quality and reliability requirements of District as determined in the District’s sole discretion. Bids on equal items will be considered provided the Bid clearly describes the article offered, samples are provided when requested, and the District judges it to be equal in quality and performance.
 - 1.3.1. State brand or make on each item. If offering other than the make, model, or brand specified, the manufacturer’s name and catalog number must be given, and manufacturers data sheets, product literature must be attached to the Bid to allow verification that the requested product meets or exceeds all specifications as listed in the bid document. Bidder must list each product specification and provide a cross-reference showing where each specification can be verified with the information provided.
- 1.4. Questions and Answers. All questions are to be addressed via PlanetBids to the responsible Buyer by the Questions Deadline. Answers to questions submitted through and answered via PlanetBids shall be considered addenda to the bid. Oral interpretations or clarifications will be without legal effect. Bidders shall not contact or ask questions of any other District employee or person involved with the development of the specifications or requirements of the bid. Failure to observe this requirement shall render the bid submitted as non-responsive.
- 1.5. State price on each item separately. Prices should be stated in the units specified. Sales tax, if any, should be stated separately.

- 1.6. The District will not consider prompt payment discount terms that require payment in less than ten (10) days.
- 1.7. Stated prices must be free on board “f.o.b. destination”, freight prepaid and allowed. All applicable charges for freight, shipping, or handling must be included in the stated prices.
- 1.8. Unless the bid form requires otherwise, District shall make payment to Vendor within thirty (30) days from the date of delivery and acceptance of the Contract goods or services, or from the date of receipt of correct and proper invoices prepared in accordance with the terms of the contract, whichever date is later.
- 1.9. Time of delivery is a part of the Bid and must be adhered to. When applicable, Bidder shall state promised delivery in the column provided opposite an individual item. Time, if stated as a number of days, shall mean “calendar” days.
- 1.10. All Bids must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- 1.11. Cost of bid preparation and participation in the bidding process shall be borne by the bidder.
- 1.12. The District may designate incomplete Bids as non-responsive.

2. SUBMISSION OF BIDS:

- 2.1. For Formal Bids, each Bid must be signed in ink and submitted on originals of the District forms in a sealed envelope with bid number, closing date and time noted on the outside of the envelope unless the bid instructions explicitly allow submission by another means such as via electronic submission through the District bid portal.
- 2.2. Bid modifications or corrections thereof received after the closing time specified will not be considered. Late Bids shall be returned to the bidder unopened.
- 2.3. EXCEPTIONS:
 - 2.3.1. Late responses to RFQs may be considered as long as other quotes submitted have not been publicly read or discussed.
 - 2.3.2. RFP responses and modifications or corrections thereof may be considered after the closing time specified at the discretion of the District’s Director of Purchasing by waiver of informalities, minor irregularities, or technical defects, as the interest of the District may require.
- 2.4. By submitting the bid, the bidder’s submitted bid constitutes the bidder’s offer to provide the District the item(s) specified at the quoted price(s) on the terms and conditions set forth in the bid solicitation package including this document.

3. BONDS:

A payment bond is required for a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000) pursuant to California Civil Code sections 9550-9566.

4. FAILURE TO BID:

If you do not quote, return bid sheet and state reason, otherwise your name may be removed from future bid opportunities.

5. SAMPLES:

Samples of items, when required, must be furnished free of expense to the District. If samples are not destroyed by tests they may be returned to the bidder at the bidder’s expense if so requested by bidder at the time it furnishes the samples.

6. TIE BIDS:

All other factors being equal, the Contract shall be awarded to the Vendor that has a Santa Clara County business or local/regional address or, if neither or both have such a business address, the Contract may be awarded by the flip of a coin in the presence of witnesses, or the entire bid may be rejected and re-bid.

7. INTERPRETATION:

Should any discrepancies or omissions be found in the bid documents, or doubt as to their meaning, the bidder shall notify the responsible District Buyer in writing at once. The Buyer will respond by sending written instructions or addenda to all bidders. The District shall not be held responsible for oral interpretations. Questions must be received at least six (6) District working days before bid opening. All addenda issued shall be incorporated into the Bid.

8. IRAN CONTRACTING ACT:

Prior to bidding on or submitting a proposal for a contract for goods or services of \$1,000,000 or more to the District, the Bidder must either: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

9. AWARD OF CONTRACT:

- 9.1. Unless the bidder specifies otherwise in his bid response or the District’s bid document gives notice of an all-or-none award, the District may accept any item or group of items from any Bid.
- 9.2. Bids are subject to acceptance at any time within ninety (90) calendar days after opening unless otherwise stipulated in Bid.
- 9.3. The District reserves the right to reject any or all Bids and to waive minor irregularities in Bids received.

10. DISCLOSURE OF BID INFORMATION:

Unless otherwise stated in the Bid, after award of a Contract, all Bids shall be subject to the requirements of the California Public Records Act pursuant to Government Code section 6250 et seq. The District assumes no responsibility for the confidentiality of information in a bid response.

11. BID PROTEST:

- 11.1. Any Bidder submitting a Bid Proposal to the District may file a protest of the District's intent to award the Contract provided that each and all of the following are complied with:
 - 11.1.1. The bid protest is in writing;
 - 11.1.2. The bid protest is filed and received by the District’s Director of Purchasing Services not more than five (5) calendar days following the date of issuance of the District's Notice of Intent to Award the Contract; and
 - 11.1.3. The written bid protest sets forth, in detail, all grounds for the bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence.
- 11.2. Any bid protest not conforming with the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the District’s Director of Purchasing Services or such individual(s) as may be designated by him/her, shall review and evaluate the basis of the bid protest.
 - 11.2.1. Either the District’s Director of Purchasing Services or other individual designated by him/her shall provide the protesting party with a written determination to uphold or deny the protest.
 - 11.2.2. For Bids under the state statutory bid threshold including UPCCAA, the Director of Purchasing will render a final determination of the bid protest.
 - 11.2.3. For Bids over the state statutory bid threshold including UPCCAA, the Purchasing Director will make a recommendation to uphold or deny the protest to the District’s Board of Trustees for a final determination of the bid protest..

SECTION II Applicable to Bids and POs.

1. ACCEPTANCE OF BID:

A digital Purchase Order e-mailed or otherwise furnished to the successful bidder within the time for Acceptance results in a binding contract without further action by either party. The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of California.

2. CONFLICT OF INTEREST:

No officer, employee, or any other agent of the District authorized in any capacity on behalf of the District to exercise any fiduciary, executive, or other similar functions, shall be allowed to possess or accept, directly or indirectly, or in any part thereof, any financial interest in any contract, bid or other procurement activity of the District.

3. INCENTIVES AND GIFTS:

The District prohibits the use of any gifts, incentives, inducements, favors, monetary returns, and rebates either promised or given ("Incentives") for employee personal benefit. District employees are not to accept Incentives from any Vendor. Providing Incentives shall result in the immediate termination of Vendor's existing and future PO's and contracts.

4. DELIVERY:

- 4.1. For any exception to the delivery date as specified on this Purchase Order, Vendor shall give prior notification and obtain written approval from the responsible District Buyer. With respect to delivery under this order, time is of the essence and the order is subject to termination for failure to deliver on time.
- 4.2. If Vendor has failed to specify a promised delivery time, it shall be 30 calendar days after receipt of Purchase Order unless the Purchase Order otherwise provides.
- 4.3. The acceptance by District of late performance, with or without objection or reservation, shall not waive the right to claim damage for such breach, and shall not constitute a waiver of the requirements for the timely performance of any other Vendor obligation.

5. SHIPPING INSTRUCTIONS TITLE AND RISK OF LOSS:

- 5.1. Unless otherwise specified by the District, all goods are to be shipped free-on-board "FOB Destination", full freight prepaid and allowed, and unloaded to the dock, except for special or expedited orders. Where shipping addresses indicate room numbers, it will be the Vendor's responsibility to make delivery to that location at no additional charge. If the District grants authorization to ship goods "FOB shipping point", Vendor agrees to prepay all shipping charges, to route cheapest common carrier (unless other routing instructions are included on PO), to bill freight as a separate item on the invoice, and to attach a copy of the freight bill to the invoice if actual freight cost exceeds \$100.00 or the estimated amount shown in the bid and on the PO, whichever is greater. It is also agreed that the District reserves the right to refuse COD shipments.
- 5.2. Title to and risk of loss on all goods shall pass to District only upon delivery by Vendor in the manner specified herein and District's acceptance of such goods.

6. TAXES, CHARGES, EXTRAS, AND WITHHOLDING FOR OUT-OF-STATE VENDORS:

The Vendor agrees to provide the District with properly completed Internal Revenue Service (IRS) Form W-9.

- 6.1. Unless otherwise specified on the District's bid forms, the quoted prices must specify applicable sales tax.
- 6.2. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose, except taxes legally payable by the District, will be paid by the District unless expressly included and itemized in the bid.
- 6.3. The District does not pay Federal Excise Taxes (F.E.T.). Do not include these taxes in your bid price, but show the amount of any such tax as a separate information item. The District will furnish an exemption certificate in lieu of paying F.E.T. The District's federal registration for such transactions is: District #94 1597718

- 6.4. The Vendor shall be responsible for payment of all applicable taxes, including payments of property tax on rented equipment.
- 6.5. The District will not withhold any sums from compensation payable to Vendor, except as provided below for Out-of-State Vendors.
 - 6.5.1. Out-of-State Vendors. If the Vendor has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Vendor acknowledges and agrees that the Vendor is required to provide the District with properly completed California Franchise Tax Board forms related to nonresident withholding of California source income. Also see link: <https://www.ftb.ca.gov/pay/withholding/withholding-on-nonresidents.html>.
 - 6.5.2. Payments of \$1,500 or more, in a calendar year, made to California non-residents, including corporations, limited liability companies, non-profits, and partnerships that do not have a permanent place of business in the State of California, are subject to seven percent (7%) state income tax withholding pursuant to the California Revenue and Taxation Code, Section 18662. The District is obligated to abide by California Franchise Tax Board (FTB) withholding requirements, unless the District receives authorization for a waiver or a reduced withholding rate from the Franchise Tax Board.

7. IDENTIFICATION:

All invoices, packing lists, packages, shipping notices, and other written documents affecting this order shall contain the applicable PO number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order. Invoices will not be processed for payment until all items invoiced are received.

8. PAYMENT TERMS:

Invoice payment terms will be computed either from the date of delivery and acceptance of the goods/services ordered, or from the date of receipt of correct and proper invoices prepared in accordance with the terms of the Purchase Order, whichever date is later. Payment is deemed to have been made on the date the District mails the warrant. Invoices shall not be payable until all items listed on the invoice have been received and accepted by the District.

9. LATE PAYMENT CHARGES:

The District shall not be responsible for late payment charges unless they are an express part of the Contract or Purchase Order. A payment is late only if invoice payment time exceeds the time allowed by the payment terms. Computation of payment time shall be based on Section II, Paragraph 7 (seven), of the Standard Terms and Conditions.

10. NON-WAIVER BY ACCEPTANCE OF VARIATION:

Neither acceptance of nor payment for any item furnished or work performed by the Vendor shall operate as a waiver of any of the provisions of this PO nor shall a waiver of any breach hereof be deemed to be a waiver of any other or subsequent breach.

11. ALTERATION OR VARIATION OF TERMS:

It is mutually understood and agreed that no alteration or variation of the terms of this Bid or PO shall be valid unless made in writing and signed by the parties hereto.

12. OWNERSHIP OF INTELLECTUAL PROPERTY:

Any services performed are work made for hire and District shall exclusively own, in perpetuity and worldwide, all rights to and flowing from the work, including any work product, performed. Vendor shall assign to District any and all rights Vendor could have, may have, or does have, in the work and/or the work product performed, and 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 matters in the name of the District. Vendor shall consent to the use of Vendor's name in conjunction with the sale, use, performance, and distribution of said matters, for any purpose and in any medium.

13. COMPLIANCE WITH THE LAW, GOVERNING LAW, VENUE:

Vendor shall in the performance of this PO comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

13.1. GOVERNING LAW: District and Vendor agree that the law governing this purchase order shall be that of the State of California.

13.2. VENUE: In the event that suit shall be brought by either party to this purchase order, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

14. WARRANTY:

14.1. Vendor warrants to District and/or District’s customer that the goods and/or services covered by this order will conform to the drawings, specifications, samples, description and time provisions furnished by District and will be of first class material and workmanship and free from defects, and District reserves the right to cancel the unfilled portion of an order without liability to Vendor if the warranty is breached. Goods will be received subject to inspection and acceptance at destination by District, and risk of loss before actual delivery and acceptance shall belong to the Vendor. Defective goods rejected by District may, without prejudice to any other legal remedy, be held at Vendor’s risk and returned to Vendor at Vendor’s expense. Defects are not waived by acceptance of goods nor by failure to notify Vendor thereof.

14.2. Unless otherwise agreed in writing by the parties, all implied and expressed warranties pursuant to the California Commercial Code, Sections 2312-2317, shall apply to the goods covered by this bid or PO. Furthermore, warranties shall run for a minimum of twelve (12) months after installation and acceptance and claims for damages may include direct damages, such as cost to repair, as well as incidental and consequential damages.

15. INSURANCE REQUIREMENTS FOR SERVICES:

If applicable, Vendor agrees to have and maintain the insurance policies specified by the District. All policies, endorsements, certificates and/or binders shall be subject to review and approval by the Risk Manager of the District as to form and content. These insurance requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Vendor agrees to provide District with a copy of applicable certificates and/or endorsements before work commences under this purchase order.

16. INDEMNITY:

To the fullest extent permitted by law, Vendor agrees to defend, indemnify and hold harmless the District, its officers, agents and employees, against any claim, loss or liability (collectively “claims”), including without limitation claims for injuries or death to persons or damage to or destruction of property, caused by or resulting from the acts or omissions of Vendor, its Officers, Agents, Employees or Subcontractors, in the performance of this PO/contract, or the breach by Vendor of any of its obligations under this PO/contract.

17. INTELLECTUAL PROPERTY INFRINGEMENT:

The Vendor shall hold the District and its officers, agents, representatives, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, “District Parties”), harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Contract or PO.

18. ADVERTISING:

Vendor shall not use the name of the District, its officers, directors, employees, or agents, in advertising, social marketing campaigns, publicity releases or otherwise without securing the prior written consent of the District in each instance.

19. LIENS, CLAIMS, AND ENCUMBRANCES:

Vendor warrants and represents that all the goods and materials ordered herein are free and clear of all liens, claims

or encumbrances of any kind.

20. INDEPENDENT CONTRACTORS:

The parties hereto agree that they are independent contractors toward each other and that the Vendor, and any agents and employees of Vendor, in the performance of this Purchase Order, are independent contractors and are not officers, employees, or agents of the District.

21. TERMINATION:

- 21.1. District may, by written notice to Vendor, terminate this purchase order in whole or from time to time in part for default: (i) if Vendor fails to deliver the goods or to perform the services strictly within the time specified herein, or if no time is specified, within a reasonable time; (ii) if the goods delivered or services performed do not conform to the requirements of this purchase order or if Vendor fails to perform any of the other provisions of this purchase order, or so fails to make progress as to endanger performance of this purchase order in accordance with its terms; or (iii) if the Vendor becomes insolvent.
- 21.2. If this purchase order is terminated for default, District, in addition to all other rights afforded by law for Vendor's default, shall have the right to charge Vendor the amount by which the costs of fabricating or procuring the goods or services cancelled from another source exceed the compensation specified herein, and District may set off any such charge against any amounts which may become payable to Vendor under this purchase order or otherwise.
- 21.3. District may, by not less than thirty (30) days written notice to Vendor, terminate this purchase order for convenience and without cause. In the event of such termination for convenience, Vendor will be paid for those goods delivered and services performed pursuant to this purchase order to the satisfaction of District up to the date of termination.

22. SAFETY AND HEALTH STANDARDS:

Vendor agrees to comply with the applicable provisions of the California Occupational Safety and Health Act of 1973 (Labor Code Section 6300 et. seq.) and the standards and regulations issued thereunder. Vendor agrees to indemnify and hold harmless the District for any loss, damage, fine, penalty, or any expense whatsoever as a result of Vendor's failure to comply with the act and any standards or regulations issued thereunder.

23. NONDISCRIMINATION:

- 23.1. Contractor shall comply with all applicable Federal, State, and local laws and regulations including District policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et seq.); California Labor Code, Sections 1101, 1102, and 1102.1. Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training or apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.
- 23.2. Violation of this provision shall be deemed a material breach by Vendor giving District a right to terminate the PO.

24. EQUIPMENT RENTAL TERMINATION:

In the event that funds are not appropriated in any fiscal year for the payment of rental or lease/purchase charges and are not appropriated for the cost of other equipment performing substantially the same function which would replace the equipment leased hereunder, then lessee may terminate the Contract without penalty on or before September 30th of such fiscal year by giving thirty (30) days written notice. Lessee agrees to make every reasonable effort including, but not limited to, requesting budget funds to be appropriated in order to avoid termination of the rental or lease/purchase. Upon termination, lessor shall have the right to recover any and all amounts then due or which may have accrued up to the date lessor received possession of the unit.

25. PAYMENT OF PREVAILING WAGES:

Except for projects of \$1000 or less, Vendors who perform building construction, alteration, demolition, or repairs or related building maintenance services must pay all workers on the District project the prevailing wage pursuant to the California Labor Code, Sections 1770 through 1777.7. A copy of the prevailing wage rate determination available at <https://www.dir.ca.gov/oprl/dprevwagedetermination.html>. The determination is issued by the California Department of Industrial Relations. Contractors working on projects described in this section must be registered with the DIR to perform work under contract with the District throughout the duration of such contract.

26. ASSIGNMENT:

The Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of the PO or Contract or the Vendor's obligations, right, title, or interest in or to the same, or any part thereof without written consent of the District. Any attempt to do any of the foregoing without written consent shall be void. The PO or Contract shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties thereto.

27. ACCESSIBILITY:

Vendor hereby warrants that the products or services to be provided under this agreement comply with California Government Code § 11135 and the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention. Vendor further agrees to indemnify and hold harmless the District parties, the Chancellor's Office of the California Community Colleges, and any California community college using the Vendor's products or services 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 agreement.

28. EXPENDITURE OF PUBLIC FUNDS:

Vendor agrees to comply with Government Code Section 8546.7 which provides that the contracting parties for any Contract involving expenditure of public funds in excess of \$10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the Contract.

29. RIGHT TO AUDIT:

District reserves the right to access and audit the Vendor's records related to any purchase or contract for a minimum period of three (3) years after final payment, unless a longer period of records retention is stipulated. Vendor shall allow the District access to these records during normal business hours and allow interviews of any employees who might reasonably have information related to such records.

30. CONFIDENTIALITY:

In performing its duties hereunder the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The parties agree that such incidental access is not a provision or conveyance or disclosure to Contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.

END