

**PROJECT MANAGEMENT  
SERVICES AGREEMENT**

This AGREEMENT is made and entered into this **23rd** day of **JANUARY** in the year **2018**, between the **RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT**, hereinafter referred to as (“**DISTRICT**”), and **CUMMING CONSTRUCTION MANAGEMENT, INC.**, hereinafter referred to as “**CONSULTANT**”. The **DISTRICT** and the **CONSULTANT** are sometimes referred to herein as a “**PARTY**” and collectively as the “**PARTIES**”. This AGREEMENT is made with reference to the following facts:

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

**WHEREAS**, such services and advice are not available within the **DISTRICT**, and cannot be performed satisfactorily by **DISTRICT** employees; and

**WHEREAS**, **CONSULTANT** possesses the necessary expert knowledge, experience, and ability to perform services not available through **DISTRICT** personnel; and

**WHEREAS**, **CONSULTANT** is specially experienced and competent to provide to the **DISTRICT** certain specialized services and/or advice in one or more of the foregoing areas; and

**WHEREAS**, **DISTRICT** desires to obtain specialized services and/or advice for **PROJECT MANAGEMENT SERVICES FOR THE RUSSELL HALL REPLACEMENT PROJECT AT SANTA ANA COLLEGE**, hereinafter referred to as the “**PROJECT**”, located in the **DISTRICT**; and

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

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

**ARTICLE I**  
**SCOPE AND SERVICES TO BE PROVIDED BY CONSULTANT**

1. Services to be provided by the CONSULTANT. Consultant may be asked to perform any of the duties or activities described in this Article if working in the capacity as an extension of staff. It will be the Consultant’s responsibilities to oversee activities as assigned by the **DISTRICT**. It is not the District’s intent that the Consultant, will have to develop all deliverables or documents independently. The Consultant shall work as an extension of staff to manage these tasks so that they are achieved as assigned.

2. Contract Term. The term of this AGREEMENT shall begin **January 23, 2018** and shall end **June 30, 2020**, in accordance with the schedule as stated in **EXHIBIT “A”**. The **PARTIES**

agree should all Services be completed by CONSULTANT and accepted, in writing, by DISTRICT prior to the end date stated within this Paragraph, the AGREEMENT shall automatically terminate.

3. The following is a list of potential duties that may be assigned to the CONSULTANT.
  - A. Planning/Pre-design Phase duties may include:
    - a. Gain familiarity with project needs, budget, and timing.
    - b. Confirm scope and program requirements.
    - c. Conduct meetings with site staff and design team to refine detailed scope and program, including compliance with District design specifications.
    - d. When required, review proposals received from consultants for scope and reasonableness to provide recommendations to the District.
    - e. Interact with consultants as needed to obtain appropriate scope and level of effort.
    - f. When required, review invoices for reasonableness, correctness, and appropriate charges.
    - g. Assist in coordinating and scheduling meetings.
    - h. Coordinate and communicate effectively with various consultants, agencies, regulatory agencies, other District employees, and/or others as needed.
    - i. Participate in meetings as required.
    - j. Perform additional tasks associated with successful project management.
    - k. Preparation, distribution, tracking, reviewing and awarding of any RFQ and/or RFP needed.
    - l. Assist in filing of documentation for accurate project file records.
  - B. Design Phase duties may include:
    - a. Assist in monitoring design phase schedule and progress throughout all phases.
    - b. Provide assistance with review design phase submittals.
    - c. When required, review invoices for reasonableness, correctness, and appropriate charges.
    - d. Assist in coordinating and scheduling meetings.
    - e. Participate in critical design phase meetings.
    - f. Coordinate and communicate effectively with various consultants, agencies, regulatory agencies, other District employees, and/or others as needed
    - g. Participate in other meetings as required.
    - h. Assist in bidding and award process.
    - i. Additional tasks associated with successful project management.
    - j. Assist in filing of documentation for accurate project file records.
  - C. Construction Phase duties may include:
    - a. Assist in coordinating and scheduling meetings.
    - b. Assist in filing of documentation for accurate project file records.
    - c. When required, review invoices for reasonableness, correctness, and appropriate charges.
    - d. When required, participate in and maintain minutes of critical construction phase meetings.

- e. Assist in the procurement, delivery, and installation of furniture and equipment.
- D. Duties throughout the project may include:
- a. Provide administrative support as required.
  - b. Provide estimating services as required.
  - c. Provide scheduling services as required.
  - d. On-going review and/or processing of invoices to ensure timely payment as required.
  - e. Review of contracts to ensure proper execution of scope of services related to the project as required.
  - f. Provide specialized technical support as required.
  - g. Miscellaneous duties related to effective and successful project management as required.
- E. Move Services Project Management:
- a. Providing assistance in all aspects of planning, scheduling, coordinating and execution of the physical relocation of personnel, faculty, staff, including, furniture and equipment or other physical assets.
  - b. Interacting with building users, project managers, faculty, college staff, district employees, other users, and project team members involved with moves and necessary relocations to implement construction projects or related to other capital facility projects.
  - c. Development of a Move Plan for each relocation or move that is anticipated for the project.
  - d. Coordinate the details and planning aspects of the move from original locations to the complete set-up at the destination.
  - e. Manage and oversee movers on the day of the scheduled moves as necessary.
  - f. Coordinate with the Furniture Supplier ensuring space efficiency.
  - g. Make recommendations with respect to existing furnishings, relocation and installation of equipment, and move phase consolidation.
  - h. Provide inventory of said furnishings.
  - i. Assess and determine the amount of moving supplies (i.e. boxes) needed for the move.
  - j. Working with Purchasing and other District personnel to coordinate asset management of furniture and equipment in keeping with the District's policies and procedures.
  - k. Work and coordinate with equipment installers.
  - l. Schedule and facilitate pre-move meetings with various stakeholders.
  - m. Work and assist District Purchasing and other District personnel with the procurement process of actual moving services (i.e. supplies and transportation) to ensure proper and adequate resources are provided to ensure a smooth move.
  - n. Implementation of Move Plan.
  - o. Move administration including pre-move conferencing, approvals of vendor contractor plans, pricing and schedules, facilitation of team and project staff meetings.

- p. Project coordination and communication (signage, Department Coordination, project notes, request tracking, etc.).
- q. Hold meetings (with frequency to be determined with various stakeholders).
- r. Track project expenditures against budget; review and verify contractor vendor requests for payment.

## **ARTICLE II – [RESERVED]**

## **ARTICLE III – TERMINATION: SUSPENSION**

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

2. **DISTRICT's Termination for Convenience.** The DISTRICT may, at any time, upon seven (7) days advance written notice to CONSULTANT terminate this Agreement or the Work of the Project for the DISTRICT's convenience and without fault, neglect, or default on the part of CONSULTANT. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the DISTRICT's written notice to CONSULTANT or such other time as the DISTRICT and CONSULTANT may mutually agreed upon. In such event, the DISTRICT shall

make payment of the Contract Price to CONSULTANT for services provided through the date of termination plus actual costs incurred by CONSULTANT directly attributable to such termination.

3. CONSULTANT Obligations upon Termination. Upon the DISTRICT's exercise of the right of termination under Article III, Paragraph 1 or 2 of this Agreement, the CONSULTANT shall take action as directed by the DISTRICT relative to its on-going administration of the Project. If requested by the DISTRICT, the CONSULTANT shall within ten (10) days of such request, assemble and deliver to the DISTRICT all Documents, work product, instruments of service, and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the CONSULTANT under this Agreement. The CONSULTANT shall deliver the originals of all Documents, work product, instruments of service, and other items of a tangible nature requested by the DISTRICT pursuant to the preceding sentence; provided, however, that the CONSULTANT may, at its sole cost and expense, make reproductions of the originals delivered to the DISTRICT.

4. DISTRICT's Right to Suspend. The DISTRICT may, in its discretion, suspend all or any part of the construction of the Project or the CONSULTANT's services under this Agreement; provided, however, that if the DISTRICT shall suspend construction of the Project or CONSULTANT's services under this Agreement for a period of sixty (60) consecutive days or more and such suspension is not caused by the CONSULTANT's default or the acts or omissions of CONSULTANT or its CONSULTANTS, upon lifting of such suspension, the Contract Price may be adjusted to reflect actual costs and expenses incurred by CONSULTANT, if any, as a direct result of the suspension and resumption of the Project construction or CONSULTANT's services under this Agreement.

5. CONSULTANT Suspension of Services. If the DISTRICT shall fail to make payment of an undisputed invoice when due CONSULTANT hereunder, CONSULTANT may, upon seven (7) days advance written notice to the DISTRICT, suspend further performance of services relating to the Project hereunder until such undisputed payment is received. In such event, CONSULTANT shall have no liability for any delays or additional costs of construction of the Project due to, or arising out of, such suspension.

#### ARTICLE IV – DISPUTES

1. Continuation of CONSULTANT Services. Except in the event of the DISTRICT's failure to make payment of an undisputed invoice due CONSULTANT for the Project, notwithstanding any disputes between DISTRICT and CONSULTANT hereunder or in connection with the Project, CONSULTANT and DISTRICT shall each continue to perform their respective obligations hereunder; including the obligation of the CONSULTANT to continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

2. Mandatory Mediation. All claims, disputes and other matters in controversy between the CONSULTANT and the DISTRICT arising out of or pertaining to this Agreement, excepting therefrom claims for indemnity, shall be submitted for resolution by non-binding mediation conducted under the auspices of the JAMS or other mutually agreeable dispute resolution service and their respective governing

Construction Mediation Rules in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the DISTRICT or the CONSULTANT commencing arbitration proceedings pursuant to Paragraph 3 below.

3. Arbitration. All claims, disputes or other matters in controversy between CONSULTANT and DISTRICT arising out of or pertaining to this Agreement which are not fully resolved through the mandatory mediation set forth in Paragraph 2 above shall be settled and resolved by binding arbitration before one (1) retired judge conducted under the auspices of the JAMS or other mutually agreeable dispute resolution service. Any arbitration hereunder shall be conducted in the JAMS' Regional Office or other ADR service's office closest to the Site. The award rendered by the Arbitrator(s) shall be final and binding upon the DISTRICT and the CONSULTANT and shall be supported by law and substantial evidence pursuant to California Code of Civil Procedure §1296. Any written arbitration award that does not include findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 shall be invalid and unenforceable. The DISTRICT and CONSULTANT hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the award if, after review of the award, the Court determines either that the award is not supported by substantial evidence or that it is based on an error of law. 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. Furthermore, if any claim or dispute is asserted by the Project Architect, Construction Manager if any, the Contractor and/or the DISTRICT relating to the Project and arising in whole or in part out of this Agreement, the services provided by or through the CONSULTANT hereunder or the Instruments of Service prepared by or through the CONSULTANT, CONSULTANT and DISTRICT agree that any arbitration proceedings initiated between CONSULTANT and DISTRICT hereunder shall, without the need for an order of the Court, be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute by and between the aforementioned parties, regardless of the dispute resolution service selected.

4. Compliance with Government Code §900 et seq. The foregoing provisions relating to dispute resolution procedures notwithstanding, neither this Agreement nor such provisions shall be deemed to waive, limit or modify any requirements under Government Code §900 et seq. relating to the CONSULTANT's submission of claims to the DISTRICT as a express condition precedent and prerequisite to filing a Demand for Arbitration, which shall be deemed a "claim" for money or damages under Government Code §900 et seq. The CONSULTANT's strict compliance with all applicable provisions of Government Code §900 et seq. in connection with any claim, dispute or other disagreement arising hereunder shall be an express condition precedent to the CONSULTANT's initiation of the binding arbitration procedures under Article IV, Paragraph 3, above.

5. Limitation on Arbitrator's Authority. Notwithstanding any other provision of this Article, the Superior Court for the State of California for the County of Orange, shall have sole and exclusive jurisdiction, and an arbitrator shall have no authority, to hear and/or determine: (i) a challenge to the institution or maintenance of a proceeding in arbitration of a claim on the grounds that the claim is barred by the applicable statute of limitations, (ii) the claim is barred by a provision of the California Tort Claims Act, (iii) claimant has failed to satisfy any and all conditions precedent to arbitration, (iv) the right to compel arbitration has been waived by the petitioner, (v) grounds exist for the revocation of the arbitration agreement, and/or (vi) there is the prospect that a ruling in arbitration would conflict with a ruling in a pending proceeding regarding the Project on a common issue of law or fact.

6. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE III OF THIS AGREEMENT SHALL GOVERN ALL TERMINATION RIGHTS AND PROCEDURES

BETWEEN THE PARTIES. ANY TERMINATION PROVISION THAT IS ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

#### **ARTICLE V – REPORTS AND/OR OTHER DOCUMENTS**

1. Any DSA documents, reports and/or other documents that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's consultants in accordance with this AGREEMENT, shall be and remain the property of the DISTRICT (hereinafter the "PROPERTY"). The DISTRICT may provide the CONSULTANT with a written request for the return of its PROPERTY at any time. Upon CONSULTANT's receipt of the DISTRICT's written request, CONSULTANT shall return the requested PROPERTY to the DISTRICT within seven (7) calendar days. Failure to comply with the requirements in this ARTICLE shall be deemed a material breach of this agreement.

#### **ARTICLE VI – ACCOUNTING RECORDS OF THE CONSULTANT**

1. Records of the CONSULTANT's direct personnel and reimbursable expenses pertaining to any extra services provided by the CONSULTANT, which are in addition to those services already required by this AGREEMENT, and any records of accounts between the DISTRICT and CONSULTANT shall be kept on a generally recognized accounting basis and shall be available to the DISTRICT or DISTRICT's authorized representative at mutually convenient times.

#### **ARTICLE VII – COMPENSATION TO THE CONSULTANT**

1. **Basic Services:** CONSULTANT agrees to perform Services set forth in this AGREEMENT and DISTRICT agrees to pay CONSULTANT for such Services in accordance with **EXHIBIT "A"**. Payment under this ARTICLE includes the cost of the Services necessary as set forth in **EXHIBIT "A"**.

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

3. **Reimbursable CONSULTANT Costs/Expenses:** DISTRICT recognizes that certain costs and expenses associated with the Services performed are reimbursable to the CONSULTANT. Provided that the CONSULTANT obtains the DISTRICT's prior written approval, costs and expenses will be reimbursed to the CONSULTANT in accordance with this ARTICLE. The DISTRICT's prior written authorization is an express condition precedent to any reimbursement to the CONSULTANT of such costs and expenses, and no claim for any additional compensation or reimbursement shall be valid absent such prior written approval by the DISTRICT and calculated in accordance with the rates set forth in **EXHIBIT "A"**. The CONSULTANT's mileage and travel time shall not be considered as an allowable reimbursable expense, except if site exceeds 25 miles from the District. The descriptive categories of expenses that may be considered for reimbursement are as follows, and any other reimbursable expenses must be approved in writing by the DISTRICT:

- a. Approved reproduction of reports and/or other documents in excess of the copies required by this AGREEMENT;
- b. Fees advanced for securing approval of authorities in connection with the Services rendered pursuant to this AGREEMENT;
- c. Mileage at IRS rates if site exceeds more than 25 miles from the District;
- d. Cost of sub-consultants hired by CONSULTANT with prior approval of DISTRICT.
- e. Other DISTRICT requested items as requested in writing.

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

### **ARTICLE VIII – ADDITIONAL CONSULTANT SERVICES**

I. CONSULTANT shall notify the DISTRICT in writing of the need for additional services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the DISTRICT before rendering any additional services. The DISTRICT may also require CONSULTANT to perform additional services which are, in the DISTRICT's discretion, necessary. Compensation for all additional services shall be negotiated and approved in writing by the DISTRICT before CONSULTANT performs such additional services. CONSULTANT shall not be entitled to any compensation for performing additional services that are not previously approved by the DISTRICT in writing. Additional services shall include:

- a. Making material revisions in reports or other documents when such revisions are required by the enactment or revision of laws, rules or regulations subsequent to the preparation and completion of such documents.
- b. Preparing reports and other documentation and supporting data, and providing other services in connection with project modifications required by causes beyond the control of the CONSULTANT which are not the result of the direct or indirect negligence, errors or omissions on the part of CONSULTANT.



c. If the DISTRICT requests additional shifts to complete the services articulated in Article II where the requests for additional shifts does not arise from the direct or indirect negligence, errors or omissions on the part of CONSULTANT. The CONSULTANT's compensation is expressly conditioned on the lack of fault of the CONSULTANT.

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

### ARTICLE IX – INDEMNITY AND INSURANCE

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

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

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

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

d. The CONSULTANT, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings, arising out of Article IX, Sections 1(a) and (b) above, that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof. With regard to the CONSULTANT's obligation to indemnify for acts of professional negligence as set forth in Article IX, Section 1(c) above, such obligation does not include the obligation to provide defense counsel or to pay for the defense of actions or proceedings brought against the DISTRICT, but rather to reimburse the DISTRICT for attorney's fees and costs incurred by the DISTRICT in defending such actions or proceedings.

e. Sole Indemnity Provisions. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE IX, SECTION 1 OF THIS AGREEMENT SHALL BE THE SOLE INDEMNITY, AS DEFINED BY CALIFORNIA CIVIL CODE § 2772, GOVERNING THIS AGREEMENT. ANY OTHER INDEMNITY THAT MAY BE ATTACHED TO THIS AGREEMENT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

f. No Limitation of CONSULTANT Liability. ANY ATTEMPT TO LIMIT THE CONSULTANT'S LIABILITY TO THE DISTRICT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE DISTRICT AND THE CONSULTANT.

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

a. Workers Compensation/Employers Insurance. The CONSULTANT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California. However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).

b. Commercial General Liability Insurance. Commercial general liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) aggregate and automobile liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) for bodily injury and property damage liability, per occurrence, including coverage for the following:

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

c. Professional Liability Insurance. Professional liability insurance, including contractual liability, with limits of \$1,000,000, per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

d. Each policy of insurance required in Article IX, Section 2(b) above shall name the DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance

carried by the DISTRICT is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to the DISTRICT prior to cancellation; and, shall waive all rights of subrogation. CONSULTANT shall notify the DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to the DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, the DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event CONSULTANT shall reimburse the DISTRICT upon demand for the cost thereof.

### ARTICLE X – MISCELLANEOUS

1. CONSULTANT shall not change any of the key personnel listed in Exhibit A without prior written notice to, and written approval by, District, unless said personnel cease to be employed by CONSULTANT. In either case, District shall be allowed to interview and approve replacement personnel.
2. If any CONSULTANT personnel fail to perform to the satisfaction of the District or fully comply with the terms of this Agreement, then upon five days' written notice by the District the CONSULTANT shall have five (5) days to remove that person from the project and replace that person with personnel acceptable to the District. All lead or key personnel for any CONSULTANT must be also be designated by the CONSULTANT and shall be subject to the District's right to interview and approve replacement personnel. In either case, District shall be allowed to interview and approve replacement personnel.
3. CONSULTANT represent that the CONSULTANT have no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of the Services and that no person having any such interest shall be employed by CONSULTANT. In the event a conflict arises during the performance of this Agreement, said person shall be immediately removed from the Project and replaced with personnel acceptable to the District.
4. Independent Contractor. CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor to the DISTRICT. This Agreement and the CONSULTANT's services hereunder shall not be deemed to be or result in creation of the relationships of: (i) employer/employee; (ii) principal/agent; (iii) partnership; (iv) common enterprise or (v) joint venture. The means and methods utilized by the CONSULTANT to complete services and other CONSULTANT obligations under this Agreement shall be in the sole discretion of the CONSULTANT provided such means and methods are generally consistent with industry practices and applicable standards of care. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's employees are not officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature provided to employees of the DISTRICT and/or to which DISTRICT's employees are entitled, including, but not limited to, State Unemployment Compensation benefits, Worker's Compensation benefits, retirement benefits, vacation/sick leaves and other similar employee benefits. CONSULTANT assumes the

full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of any applicable prevailing wages to the CONSULTANT's employees and all federal, state, local taxes and other similar impositions relating to payments of the DISTRICT to the CONSULTANT under this Agreement and/or CONSULTANT's payment to CONSULTANT employees completing or providing services under this Agreement, including unemployment insurance, social security contributions and payroll/income taxes. This Agreement and the CONSULTANT's services hereunder shall not preclude the CONSULTANT contracting with others during the Term of this Agreement, provided that such other contracts do not result in a conflict of interest, result in disclosure of Confidential Information or otherwise violate a term or condition of this Agreement.

5. No Third Party Beneficiaries. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or CONSULTANT.

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

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

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

THIS AGREEMENT SHALL NOT INCLUDE OR INCORPORATE THE TERMS OF ANY GENERAL CONDITIONS, CONDITIONS, MASTER AGREEMENT OR ANY OTHER BOILERPLATE TERMS OR FORM DOCUMENTS PREPARED BY THE CONSULTANT. THE ATTACHMENT OF ANY SUCH DOCUMENT TO THIS AGREEMENT SHALL NOT BE INTERPRETED OR CONSTRUED TO INCORPORATE SUCH TERMS INTO THIS AGREEMENT UNLESS THE DISTRICT APPROVES OF SUCH INCORPORATION IN A SEPARATE WRITING SIGNED BY THE DISTRICT. ANY REFERENCE TO SUCH BOILERPLATE TERMS AND CONDITIONS IN THE PROPOSAL OR QUOTE SUBMITTED BY THE CONSULTANT SHALL BE NULL AND VOID AND HAVE NO EFFECT UPON THIS AGREEMENT. PROPOSALS, QUOTES, STATEMENT OF QUALIFICATIONS AND OTHER SIMILAR DOCUMENTS PREPARED BY THE CONSULTANT MAY BE INCORPORATED INTO THIS AGREEMENT BUT SUCH INCORPORATION SHALL

BE STRICTLY LIMITED TO THOSE PARTS DESCRIBING THE CONSULTANT'S SCOPE OF WORK, RATE AND PRICE SCHEDULE AND QUALIFICATIONS.

9. Time. Time is of the essence with respect to all provisions of this AGREEMENT.
10. Attorney's fees and Costs. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney's fees.
11. Uncertainties/ambiguities. This AGREEMENT shall be liberally construed to effectuate the intention of the PARTIES with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to any word, phrase or provision of this AGREEMENT, neither this AGREEMENT nor any uncertainty or ambiguity herein will be construed or resolved against either PARTY (including the PARTY primarily responsible for drafting and preparation of this AGREEMENT), under any rule of construction or otherwise, it being expressly understood and agreed that the PARTIES have participated equally or have had equal opportunity to participate in the drafting hereof.
12. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, all of which shall be sufficient evidence of this AGREEMENT.
13. Confidentiality: The CONSULTANT shall not disclose or permit the disclosure of any confidential information, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this AGREEMENT.
14. Severability: If any portion of this AGREEMENT is held as a matter of law to be unenforceable, the remainder of this AGREEMENT shall be enforceable without such provisions.
15. Gift Ban: Effective April 25, 2016, the Board of Trustees adopted Board Policy 3821 Gift Ban Policy. The Consultant shall adhere to Board Policy 3821 as there are strict prohibitions outlined in the policy. For further reference and information please read BP 3821 located on the RSCCD website at <http://www.rsccd.edu/Trustees/Pages/BP-3821.aspx>.
16. Notices: All notices or demands to be given under this AGREEMENT by either PARTY to the other shall be in writing and given either by: (a) personal service; or (b) by U.S. Mail, mailed either by registered, overnight, or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the fifth day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either PARTY may be changed by written notice given in accordance with the notice provisions of this Paragraph. At the date of this AGREEMENT, the addresses of the PARTIES are as follows:

To the DISTRICT:

Rancho Santiago Community College District  
Rancho Santiago Community College District  
Project Management – Russell Hall Replacement Project at SAC

To the CONSULTANT:

Cumming Construction Mgmt., Inc.

Attn: Carri Matsumoto, Assistant Vice Chancellor  
Facilities Planning, District Construction & Support Services  
2323 North Broadway, Suite 112  
Santa Ana, CA 92703  
Telephone: (714) 480-7510  
Facsimile: (714) 796-3910

Attn: Anthony Sanchez  
Executive Vice President  
130 Vantis Drive, Ste 110  
Aliso Viejo, CA 92656  
Telephone: 323-855-4710  
Email: asanchez@ccorpusa.com

17. Tobacco Prohibited: any tobacco use (smoking, chewing, etc.) by anyone, is prohibited at all times on any DISTRICT property.
18. Profanity on any DISTRICT property is prohibited, including, but not limited to, racial, ethnic, or sexual slurs or comments which could be considered harassment.
19. Appropriate dress is mandatory. Therefore, tank tops, cut-offs and shorts are not allowed. Additionally, what is written or pictured on clothing must comply with the requirements of acceptable language as stated above in Paragraph 16.
20. Parking. CONSULTANT shall be responsible for purchasing applicable parking passes from Safety & Security Offices when the need arises to visit any of the campuses.
21. Education Code Section 45125.1: During the entire term of this AGREEMENT, CONSULTANT, unless specifically exempted in writing by the DISTRICT, shall fully comply with the provisions of Education Code section 45125.1 ("Fingerprinting Requirements"), when the DISTRICT determines, in its sole discretion, that the CONSULTANT may have contact with Rancho Santiago Community College students or other K-12 pupils in the performance of services under this AGREEMENT. If the CONSULTANT is required to meet the Fingerprinting Requirements, the CONSULTANT must certify in writing to the DISTRICT that neither the employer nor its employees, who must be fingerprinted, have been convicted of a violent or serious felony as defined in Education Code section 45122.1. Unless specifically exempted in writing by the DISTRICT, the CONSULTANT must complete and submit to the DISTRICT a Fingerprint Certification form, in the DISTRICT'S required format, prior to CONSULTANT or any of the CONSULTANT'S employees performing work on the Project or coming into contact with DISTRICT students or other K-12 pupils. CONSULTANT further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code Section 45125 et seq., and will comply with any such requirements as determined by the DISTRICT.
22. Images: If applicable, the CONSULTANT is prohibited from capturing on any visual medium images of any property, logo, student, or employee of the DISTRICT, or any image that represents the DISTRICT without express written consent from the DISTRICT.
23. This AGREEMENT is not a valid or enforceable obligation against the DISTRICT until approved or ratified by motion of the Governing Board of the DISTRICT duly passed and adopted.

#### **ARTICLE XI – ENTIRE AGREEMENT**

1. All of the AGREEMENT between the PARTIES is included herein, and no warranties expressed or implied, representations, promises, or statements have been made by either PARTY unless endorsed hereon in writing, and no charges or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as the AGREEMENT.

2. Neither amendments to nor modifications of this AGREEMENT shall be effective unless signed by officials of the CONSULTANT and the DISTRICT having authority equal to or greater than that of the officials signing this AGREEMENT. The DISTRICT and the CONSULTANT hereby agree to the full performance of the covenants contained herein.

***(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)***

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

**CUMMING CONSTRUCTION  
MANAGEMENT, INC.**

**RANCHO SANTIAGO COMMUNITY COLLEGE  
DISTRICT OF ORANGE COUNTY**

By   
NAME \_\_\_\_\_  
*Executive Vice President*

By   
Peter J. Hardash  
*Vice Chancellor Business Operations/Fiscal Services*

District Operations Center

Date 1/12/2018

Date 1/2/18

Address 130 Vantis Drive, Suite 110  
Aliso Viejo, CA 92656

Phone (323) 855-4710

Tax ID# 20-8782096

Email asanchez@ccorpusa.com



**EXHIBIT "A"**

**1. Compensation for Services**

The DISTRICT shall compensate the CONSULTANT for the performance of all Services required under this AGREEMENT an hourly amount not-to-exceed **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000)**. Payments will be based on monthly invoices, payable in arrears, which will set forth the hours actually worked and expenses incurred during the billing period, in accordance with ARTICLE VII of this AGREEMENT. The billing rates indicated in Paragraph 2 below will be multiplied by the actual hours for each position to arrive at the total fee for each month. The CONSULTANT shall not exceed the fee without prior written authorization of the DISTRICT. There are no reimbursable expenses for this AGREEMENT.

**2. Hourly Rates**

The rates set forth in this EXHIBIT "A" shall be valid and not increased during the life of this AGREEMENT.

<b>Position:</b>	<b>Name of Personnel:</b>	<b>Hourly Rate:</b>
Senior Project Manager	David Gonzales	\$155
Project Manager	Gustavo Ibarra, Matt Fulton	\$150
Assistant Project Manager	June Pena	\$130

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

**3. Project Description**

The agreement provides for staff augmentation services and project management services as outline in Article I. Staff will provide project management services for Russell Hall Replacement project as assigned.

**EXHIBIT “B” – LOCAL HIRE AND LOCAL BUSINESS INFORMATION**

Project Name: \_\_\_\_\_ (“Project”)

*(To be Submitted Upon Completion of the Project and as a Precondition to Final Payment)*

The Vendor shall complete this form for purposes of reporting participation by Local Hires and Local Businesses on the Project. At the end of the Project and as a precondition for receipt of Final Payment, the Vendor shall provide a final written analysis and evaluation of the final percentage of Local Hires and Local Businesses on the entire Project.

The percentage for Local Hire participation shall be calculated by taking the ratio of the total number of workers performing work on the Project that are Local Hires as defined above, compared against the total number of all workers performing work on the Project.

The percentage for Local Business participation shall be calculated by taking the ratio of the total number of businesses providing any labor, materials or services for the Project authorized by the Vendor or its subcontractors that are Local Businesses as defined above, compared against the total number of all businesses providing any labor, materials or services for the Project authorized by the Vendor or its subcontractors.

**Definitions**

“Local Hire” means an individual who is “domiciled”, as defined in Elections Code section 349(b), in the following zip codes at least seven days prior to commencing work on the Project: 92602, 92606, 92610, 92612, 92614, 92618, 92620, 92626, 92627, 92660, 92675, 92676, 92679, 92688, 92701, 92703, 92704, 92705, 92706, 92707, 92708, 92780, 92782, 92802, 92805, 92806, 92807, 92808, 92840, 92843, 92861, 92862, 92865, 92866, 92867, 92868, 92869, 92883, or 92887. Local Hire shall also mean a “veteran” as defined in Military and Veterans Code section 980, who possesses a current and valid DD Form 214 card, and will provide work on the Project. Local Hire shall also mean any current or former student that the District determines is or was enrolled as a student at one of the District’s colleges, and will provide work on the Project.

“Local Business” means a business serving as a vendor as defined in Business and Professions Code section 7026 or a business supplying construction-related materials that has its principal headquarters or permanently staffed regional office and that has held a business license within the zip codes listed above for Local Hire for a minimum of three months prior to the date the entity submits a bid, contract, or proposal for the Project. A Local Business vendor must also be properly registered with the Department of Industrial Relations in accordance with Labor Code section 1725.5. Local Business shall also mean any business supplying services or supplies for the Project that has its principal headquarters or permanently staffed regional office and that has held a business license within the zip codes listed above for Local Hire for a minimum of three months prior to the date the entity signs a contract or proposal for the Project. Local Business shall also mean any state or nationally certified minority-owned, women-owned, or disabled veteran business that has performed work for the District or other public agency within the zip codes listed above for Local Hire during the past four years. Certification for a minority-owned, women-owned, or disabled veteran business must be provided to the District. Local Business shall also

mean a business that participates in an internship program that is currently approved or recognized by the District. The entity may also apply to obtain District approval of its internship program. The internship program must be approved by the District and must be completed by the end of the Project or by the next semester immediately after completion of the Project. Local Business shall also mean any entity that uses apprentices from a District approved apprenticeship program.

The Vendor shall complete this form for purposes of assisting the District in collecting data regarding participation by Local Hires and Local Businesses on the Project.

Total Number of Workers on Project:			Total Number of Businesses on Project:					
Total Number of Local Hires on Project:			Total Number of Local Businesses on Project:					
CLASSIFICATION: Of the total number of local hires above, please classify each. A local hire may have multiple classifications. (Example: a local resident, a former student)			CLASSIFICATION: Of the total number of local businesses above, please classify. A local business may have multiple classifications. (Example: a local regional office, DVBE and MBE)					
Of the total local hires, how many are local residents by zip code?	Of the total local hires, how many are U.S. veterans?	Of the total local hires, how many are current or former students?	Of the total local businesses, how many are local by zip code?	Of the total local businesses, how many are MBE?	Of the total local businesses, how many are WBE?	Of the total local businesses, how many are DVBE?	Of the total local businesses, how many participate in a District approved internship program?	Of the total local businesses, how many utilize apprentices from a District approved apprenticeship program?
QTY:	QTY:	QTY:	QTY:	QTY:	QTY:	QTY:	QTY:	QTY:
Percentage of Local Hires (Total Local Hires/Total Workers): %			Percentage of Local Businesses (Total Local Businesses/Total Businesses): %					

In submitting this form, the Vendor certifies that it has independently verified that all Local Hires and Local Businesses noted in this form meet the definitions for Local Hires and Local Businesses as set forth in the Local Hires and Local Businesses Participation Statement. The District may request Vendor to provide additional information or documents to support the numbers listed above. Vendor agrees to provide all additional information or documents requested by the District. Failure to provide any requested information may result in the District delaying Final Payment to the Vendor and Vendor agrees that it shall have no claim for additional costs or days resulting from or in any way related to providing the information in this form.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Total Number of Workers on Project	Total Number of Local Hires on Project	Total Number of Businesses on Project	Total Number of Local Businesses on Project
Percentage of Local Hires: _____ %		Percentage of Local Businesses: _____ %	