

CASp PROJECT MANAGEMENT AND PLANNING CONSULTANT SERVICES AGREEMENT

This AGREEMENT is made and entered into this 11th day of MAY in the year 2021, between the RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT, hereinafter referred to as (“DISTRICT”), and MARX|OKUBO ASSOCIATES, 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 Certified Access Specialist (“CASp”) to plan, coordinate, manage, and closeout several Americans with Disabilities Act (“ADA”) repair projects, 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 **SERVICES TO BE PROVIDED BY CONSULTANT**

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

2. Qualifications of the CONSULTANT. CONSULTANT must provide key staff that have requisite experience in the following:

- a. Current Certified Access Specialist (“CASp”).
- b. California Community College experience is strongly desired.
- c. Preference for a degree in Bachelor of Architecture and/or California Licensed Architect.
- d. Preference for construction administration experience.
- e. Demonstrated experience in analysis of American Disabilities Act path of travel claims.
- f. Liaison with Regulatory Agencies: Liaison with regulatory agencies is required in order to provide guidance to the District and others as deemed necessary.

Demonstrated ability to communicate effectively with proper state representatives and has proven successful experience with undertaking such efforts on previous projects.

- g. Adhere to Regulatory Agency Requirements: Review, advise and undertake any regulatory agency reviews if needed to ensure that the proposed path of Travel Plan would meet the American Disabilities Act and any other related regulatory requirements.

3. Contract Term. The term of this AGREEMENT shall begin **June 1, 2021** and shall end **June 30 2022**. The District shall have the option to renew the AGREEMENT with the same terms on a yearly basis, based on program need, in accordance with the schedule as stated below. The PARTIES agree should all Services be completed by CONSULTANT and accepted, in writing, by DISTRICT prior to the end date stated within this Paragraph, the AGREEMENT shall automatically terminate.

The District will have the ability to renew the contract on an annual basis for up to five (5) years maximum at an hourly, not-to-exceed fee of \$615,000 per year. The contract duration is up to five (5) years maximum beginning on **June 1, 2021** and could be through **June 30, 2026** if on an annual basis the District elects to renew such contract based on needs. The District shall have the authority to reallocate any unused funds from any prior years to the next year if the contract is extended or renewed on an annual basis.

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

Year 1 (6/1/21-6/30/22):	\$665,000
Year 2 (7/1/22-6/30/23):	\$615,000 optional to renew
Year 3 (7/1/23-6/30/24):	\$615,000 optional to renew
Year 4 (7/1/24-6/30/25):	\$615,000 optional to renew
Year 5 (7/1/25-6/30/26):	\$615,000 optional to renew
Total Not to Exceed:	\$3,125,000

ARTICLE II

CONSULTANT'S SCOPE OF WORK AND RESPONSIBILITIES

1. CONSULTANT, in support of the specific task outline in this agreement or other duties as may be requested by the District, may be asked to perform any of the duties or activities described below, but not limited to:

- a. Planning/Predesign duties may include:
 - i. Confirm scope and program requirements, including compliance with Title V of the Americans with Disabilities Act requirements.
 - ii. Conduct meetings with site staff and design team(s) to refine detailed scope and program, including compliance with District educational specifications and Material and Construction Standards.
 - iii. RFP preparation, distribution, tracking, reviewing and recommendation for awarding for any consultant service required for the projects.
 - iv. Interact with design consultants and other consultants as needed to obtain appropriate scope and level of effort.
 - v. Set up a decision-making framework to ensure timely District decisions.

- vi. Ensure that projects are properly set up in tracking software which may include initial project schedule and budget.
 - vii. Review design consultant invoices for reasonableness, correctness, and appropriate charges.
 - viii. Provide monthly status reports in prescribed format.
 - ix. Attend weekly program meetings.
 - x. Participate in and maintain minutes of critical pre-design phase meetings.
 - xi. Participate in other meetings as required.
 - xii. Coordinate and communicate effectively with various consultants, agencies, regulatory agencies, other District employees, and/or others as needed.
 - xiii. Additional tasks associated with successful project management.
 - xiv. Monitor schedule and progress throughout all phases.
 - xv. Interface, appropriately as directed, with District and college faculty, administration and leadership.
- b. Design Phase duties may include:
- i. Review design phase submittals, provide comments/revisions, and recommend approval.
 - ii. Monitor project budget to ensure compliance with the District's project budget.
 - iii. Monitor progress of design team to ensure submittal of required DSA documents and retrieve verification.
 - iv. Ensure that project is properly maintained following District's filing and documenting procedures.
 - v. Review invoices for reasonableness, correctness, and appropriate charges.
 - vi. Provide weekly status reports in prescribed format.
 - vii. Attend weekly program meetings.
 - viii. Participate in and maintain minutes of critical design phase meetings.
 - ix. Participate in other meetings as required.
 - x. Assist in bidding and award process.
 - xi. Participate in pre-bid meetings.
 - xii. Facilitate the functioning of an integrated project delivery team.
 - xiii. Additional tasks associated with successful project management.
- c. Construction Phase duties may include:
- i. Ensure that contract is properly constructed and executed and issue notice to proceed.
 - ii. Proactively manage change on the project.
 - iii. Review and approve contractor's change order requests for entitlement and cost.
 - iv. Manage project contingencies and allowances.
 - v. Monitor project budget to ensure compliance with the District's project budget.
 - vi. Monitor construction schedule and report variances.
 - vii. Monitor progress of design team to ensure submittal of required DSA documents and retrieve verification.
 - viii. Ensure that project is properly maintained following District's filing and documenting procedures.
 - ix. Review invoices for reasonableness, correctness, and appropriate charges.

- x. Provide daily status reports in prescribed format.
 - xi. Attend weekly program meetings.
 - xii. Participate in and maintain minutes of critical construction phase meetings.
 - xiii. Maintain project documentation in compliance with program standards.
 - xiv. Facilitate the functioning of an integrated project delivery team.
 - xv. Additional tasks associated with successful project management.
- d. Closeout phase duties may include:
- i. Assist with final punch list and final inspections.
 - ii. Assist in review and transfer of the final warranty/guarantee.
 - iii. Monitor progress of design team in submitting required DSA closeout documentation and retrieve verification.
 - iv. Assist in review and transfer of all required maintenance and operation manuals.
 - v. Assistance with and/or coordinate moving activities and occupancy.
 - vi. Coordinate and ensure that required training on systems and materials takes place.
 - vii. Coordinate and monitor completion of commissioning process.
 - viii. Review final invoices.
 - ix. Review closeout documents.
 - x. Reconcile expenditures and budget.
 - xi. Assist in the finalization of any outstanding contracts and claims.
 - xii. Ensure that all contract deliverables have been completed and submitted to the District.
 - xiii. Additional tasks associated with successful project management.
- e. Duties throughout the projects may include:
- i. Provide administrative support as required.
 - ii. Provide estimating services as required.
 - iii. Provide scheduling services as required.
 - iv. On-going review and/or processing of invoices to ensure timely payment as required.
 - v. Review of contracts to ensure proper execution of scope of services related to the project as required.
 - vi. Provide specialized technical support as required.
 - vii. Miscellaneous duties related to effective and successful project management as required.
 - viii. Attendance of Meetings and Other General Duties: Must attend various meetings; undertake a collaborative communication process between the District, the Colleges, design team(s), and other groups to ensure successful completion of the projects.
 - ix. Monitor schedule and progress throughout all phases.

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 construction services 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

Rancho Santiago Community College District
CASp Project Management and Planning Consultant Services

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

2. 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 reimbursables or overtime absent the prior written authorization of the DISTRICT. The DISTRICT shall make payment to the CONSULTANT of the approved invoiced amount within forty-five (45) days of the DISTRICT's receipt of the invoice.

3. Invoices requesting payment for Additional Services performed in accordance with Article VIII below must reflect the compensation approved by the DISTRICT and include a copy of the DISTRICT's written authorization. The DISTRICT's prior written authorization is an express condition precedent to any payment by the DISTRICT for Additional Services and no claim by the CONSULTANT for additional compensation related to Additional Services shall be valid absent such prior written approval by the DISTRICT to proceed with such Additional Services as required by Article VIII.

ARTICLE VIII
ADDITIONAL CONSULTANT SERVICES

1. CONSULTANT shall notify the DISTRICT in writing of the need for additional services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the DISTRICT before rendering 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. 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. 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. ANY ATTEMPT TO LIMIT THE CONSULTANT'S LIABILITY TO THE DISTRICT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE DISTRICT AND THE CONSULTANT.

2. 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. 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 with limits of not less than TWO MILLION DOLLARS (\$2,000,000) 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, including contractual liability, with limits of \$2,000,000, 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. 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. Key Personnel.

a. 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.

b. 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.

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

d. CONSULTANT shall not change any of the key personnel without prior written approval by the DISTRICT, unless said personnel cease to be employed by CONSULTANT. In either case, DISTRICT shall be allowed to interview and approve replacement personnel. CONSULTANT agrees that reassignment of any of the listed personnel during the AGREEMENT period shall only be with other professional personnel who have equivalent experience and shall require prior consultation and written approval by the DISTRICT. Any costs associated with reassignment of personnel shall be borne exclusively by CONSULTANT and CONSULTANT shall not charge the DISTRICT for the cost of training or "bringing up to speed" replacement personnel.

2. Conflict of Interest. 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.

3. 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.

4. 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.

5. 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.

6. Governing Law. This AGREEMENT shall be governed by the laws of the State of California.

7. 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.

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

9. 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.

10. 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.

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. Counterparts. 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, revised November 13, 2017 and January 13, 2020 and April 12, 2021, 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 <https://rsccd.edu/Trustees/Documents/Board%20Policies/BPs-Chapter%203/BP%203821%20Gift%20Ban%20Policy.pdf>.

16. Use of Drones: Effective August 13, 2018, the Board of Trustees adopted Administrative Regulation 3580 Use of Unmanned Aircraft Systems. The Consultant shall adhere to Administrative Regulation 3580 as there are strict prohibitions outlined regarding the use of drones. For further reference and information please read AR 3580 located on the RSCCD website at <https://rsccd.edu/Trustees/Documents/Board%20Policies/BPs-Chapter%203/BP%203580%20Use%20of%20Unmanned%20Aircraft%20Systems.pdf>

17. 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
Attn: Carri Matsumoto, Assistant Vice Chancellor
Facility Planning, District Construction & Support Services
2323 North Broadway, Suite 112
Santa Ana, CA 92703
Telephone: (714) 480-7510

To the CONSULTANT:

Marx|Okubo Associates, Inc.
Attn: Chris Geier
Vice President
4 Hutton Centre Drive, Suite 950
Santa Ana, CA 92707
Telephone: 949-660-8908

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

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

20. 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.

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. Parking. CONSULTANT shall be responsible for purchasing applicable parking passes from Cashier's Office or Parking Ticket Kiosk when the need arises to visit any of the campuses.

23. 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.

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.

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

4. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. Any such counterpart containing an electronic, digital or facsimile signature shall be deemed an original. Execution of this agreement, signifies the parties mutual consent to conduct transactions electronically. Pursuant to the California Uniform Electronic Transactions act (“UETA”) (Cal. Civic Code § 1633.1 et seq.) and California Government Code §16.5, the District reserves the right to conduct business electronically, unless otherwise communicated by the District to stop such electronic transactions, including without limitation to the use of electronic or digital signatures.

(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.

CONSULTANT:
MARX|OKUBO ASSOCIATES, INC.

DISTRICT:
RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT

By: _____

By: _____

Print Name: _____

Adam M. O'Connor, Interim Vice Chancellor
Business Operations and Fiscal Services

Its: _____

Date: _____

Date: _____

Address: _____

Phone: _____

Tax ID: _____

E-mail: _____

COPIES TO:

GENERATING OFFICE
Rancho Santiago Community College District
2323 N. Broadway, Suite 112
Santa Ana, CA 92706
Carri Matsumoto, Assistant Vice Chancellor
Facility Planning, District Construction and
Support Services

PURCHASING DEPARTMENT
Rancho Santiago Community College District
2323 N. Broadway, Suite 109
Santa Ana, CA 92706
Linda Melendez, Director, Purchasing Services

EXHIBIT “A”

1. Compensation for Services:

The DISTRICT shall compensate the CONSULTANT for the performance of all annual Services required under this AGREEMENT at an hourly, not-to-exceed amount of **SIX HUNDRED SIXTY-FIVE THOUSAND DOLLARS AND NO/100 (\$665,00)**. Payments will be based on monthly invoices, payable in arrears, which will set forth the days, dates and hours actually worked during the billing period, in accordance with ARTICLE II, Paragraph 4 of this AGREEMENT. The billing rates indicated herein will be multiplied by the actual hours for each position to arrive at the total fee for each month. The CONSULTANT will not exceed the not-to-exceed fee without prior written authorization of the DISTRICT.

- a. There are no reimbursable expenses for this AGREEMENT.

2. Hourly Rates:

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

Position	Name of Personnel	Hourly Rate
Project Manager, CASp	Rick Martin	\$165*
Project Manager, CASp	Leah Schoelles	\$165*
Project Administrator	TBD	\$90
<i>* maximum of 25 hours per work week, Monday - Friday</i>		

Any changes to personnel shall be in accordance per Article X of this Agreement. 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:

Consultant will provide a Certified Access Specialist (“CASp”) to plan, coordinate, manage, and closeout several Americans with Disabilities Act (“ADA”) Barrier Removal projects throughout the District’s various facilities including, but not limited to:

- 1) Centennial Education Center (“CEC”) – 2900 W. Edinger Avenue, Santa Ana, CA 92704
- 2) Digital Media Center (“DMC”) – 1300 S. Bristol Street, Santa Ana, CA 92704
- 3) District Operations Center (“DO”) – 2323 N. Broadway, Santa Ana, CA 92706
- 4) Santa Ana College (“SAC”) – 1530 W. 17th Street, Santa Ana, CA 92706
- 5) Santiago Canyon College (“SCC”) – 8045 E. Chapman Avenue, Orange, CA 92869
- 6) Orange County Sheriff’s Regional Training Academy (“Sheriff’s Training”) – 15991 Armstrong Avenue, Tustin, CA 92782

The projects at each site are anticipated to occur over several years as funding becomes available. The District has completed a Transition Plan and survey report for each site, which includes noncompliant accessibility items, photographs, proposed solutions for removing the barrier, and proposed methods to prioritize barriers. Consultant will be responsible for implementing and providing expert technical and project management support to the District’s Transition Plan. The

Consultant will be required to prioritize projects and implement projects including scoping, budgeting, and oversight of design and construction phases of the projects. Consultant will serve as the primary point of contact for this program of ADA Barrier Removal Projects. The Consultant will be housed within the District Offices for a minimum of 25 hours a week to 40 hours a week, depending on projects. The Consultant will work alongside staff in the Facility Planning, District Construction and Support Services Department. It is expected that the Consultant provided will also manage all project related schedules, budgets, impacts and activities. This includes communication and coordination with sites, staff and agencies with any regulatory oversight.

The Consultant will be required to function within established District protocols, procedures, Board policies, Administrative Regulations, including budget, accounting, and project tracking software or other department processes. Please note, during the COVID pandemic, Consultants will be required to work remotely as scheduled and requested by the District.

4. Schedule of Work:

To be determined on a project by project basis.

EXHIBIT “B” – STATEMENT OF INTENT TO MEET DVBE PARTICIPATION GOALS

The Rancho Santiago Community College District has a participation goal for disabled veteran business enterprises (“DVBE”) of 3 percent per year. Although it is not specifically required, you are encouraged to include DVBE a enterprises as part of the Services under this AGREEMENT. The undersigned, on behalf of _____ (“Consultant”), certifies the following:

- Consultant **is** a certified Disabled Veteran Business Enterprise
- Consultant is **not** a certified Disabled Veteran Business Enterprise
- Consultant will include a certified Disabled Veteran Business Enterprise as part of its Services to the District.
- Consultant will not include a Certified Disabled Business Enterprise as part of its Services to the District. If this box is checked, please explain why:

Company: _____
Name: _____
Title: _____
Signature: _____
Date: _____

EXHIBIT “C” – LOCAL HIRE AND LOCAL BUSINESS INFORMATION

Reserved – completed as part of RFQ/RFP #2021-285.