

CONSULTANT SERVICES AGREEMENT

This AGREEMENT is made and entered into this **22nd** day of **June** in the year **2021** (“EFFECTIVE DATE”), between the RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT, hereinafter referred to as (“DISTRICT”), and **BRAILSFORD & DUNLAVEY, 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, DISTRICT requires specialized services and/or advice in connection with certain consulting, financial, economic, accounting, estimate and/or administrative matters where such services and advice are not available to the DISTRICT without cost either internally or from other public agencies;

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

WHEREAS, to the extent required by law, CONSULTANT is and shall be registered with the Department of Industrial Relations in accordance with Labor Code section 1725.5 while performing or providing any Services under this AGREEMENT; and

WHEREAS, DISTRICT desires to obtain specialized services and/or advice for **DEVELOPMENT PLANNING – CENTENNIAL EDUCATION CENTER AT SANTA ANA COLLEGE**, hereinafter referred to as the “PROJECT”, located within 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 hereinafter set forth in this AGREEMENT.

NOW, THEREFORE, the PARTIES hereto agree as follows:

ARTICLE I – SCOPE OF SERVICES AND RESPONSIBILITIES

1. **Services.** CONSULTANT shall provide to the DISTRICT on the terms set forth herein as well as those articulated in **EXHIBIT “A”** which is attached hereto and incorporated herein (“Services”). The PARTIES agree if there is a proposal or similar document attached or incorporated into **EXHIBIT “A”**, that the terms of this AGREEMENT shall be controlling over any of the terms contained within the CONSULTANT’s proposal or similar document.

2. **Contract Term.** The term of this AGREEMENT shall begin **June 22, 2021** and shall end **December 31, 2022** 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. **CONSULTANT’s Certifications, Representations and Warranties.** CONSULTANT makes the following certifications, representations, and warranties for the benefit of the DISTRICT and CONSULTANT acknowledges and agrees that the DISTRICT, in deciding to engage CONSULTANT pursuant to this AGREEMENT, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONSULTANT’s engagement hereunder:

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

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

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

5. {RESERVED}.

6. The CONSULTANT shall coordinate and perform all services set forth in the AGREEMENT through the DISTRICT's authorized representative.

7. CONSULTANT agrees that it shall perform the services herein in a competent, cost effective, prompt, and professional manner as required by the specific requirements set forth herein. In the performance of such services, CONSULTANT is required to adhere to the express requirements stated herein and only if such specific requirements are not identified herein, then CONSULTANT shall perform such services in accord with the standards in the industry for like professionals performing such services in the immediate geographical area in which the services required herein are to be performed.

8. DIR Contractor Registration. This PROJECT is a public works project as defined in Labor Code section 1720. To the extent applicable, the CONSULTANT and all subcontractors performing the work for the PROJECT must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations ("DIR") and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of this AGREEMENT. Failure to comply with these requirements shall be deemed a material breach of this AGREEMENT and grounds for termination for cause. To the extent applicable, the CONSULTANT and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the DISTRICT or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

ARTICLE II – 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 II and shall be calculated in accordance with the rates set forth in **EXHIBIT "A"**.

3. Reimbursable CONSULTANT Costs/Expenses: DISTRICT recognizes that certain costs and expenses associated with the Services performed are reimbursable to the CONSULTANT. Provided that the CONSULTANT obtains the DISTRICT's prior written approval, costs and expenses will be reimbursed to the CONSULTANT in accordance with this 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. The descriptive categories of expenses that may be considered for reimbursement are as follows, and any other reimbursable expenses must be approved in writing by the DISTRICT:

- a. Approved reproduction of reports and/or other documents in excess of the copies required by this AGREEMENT;
- b. Fees advanced for securing approval of authorities in connection with the Services rendered pursuant to this AGREEMENT;
- c. Cost of sub-consultants hired by CONSULTANT with prior approval of DISTRICT.
- d. Other DISTRICT requested items as requested in writing.

4. Invoices. CONSULTANT shall invoice all fees and/or costs monthly for the Basic Services that are provided in accordance with this AGREEMENT from the time the CONSULTANT begins work on the PROJECT. The CONSULTANT shall submit one (1) invoice monthly to the DISTRICT detailing all the fees associated with the applicable progress to completion percentage, reimbursable expenses (if any), and Additional Services (if any) incurred for the monthly billing period. Invoices requesting reimbursement for 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 the invoiced item(s), if applicable. Invoices requesting payment for Additional Services must reflect the negotiated compensation previously approved by the DISTRICT and include a copy of the DISTRICT's written authorization notice approving the Additional Services and the additional compensation approved by the DISTRICT. No payments will be made by the DISTRICT to the CONSULTANT for monthly invoices requesting reimbursable expenses or Additional Services absent the prior written authorization of the DISTRICT. The DISTRICT's prior written authorization is an express condition precedent to any payment by the DISTRICT for Additional Services or reimbursable expenses and no claim by the CONSULTANT for additional compensation related to Additional Services or reimbursable expenses shall be valid absent such prior written approval by the DISTRICT.

5. District's Right to Withhold. The DISTRICT may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment to such extent as may be necessary to

protect the DISTRICT from loss, including costs and attorneys' fees, on account of: 1) defective or deficient work product not remedied; 2) failure of the CONSULTANT to make payments properly to its employees or sub-consultants; 3) failure of CONSULTANT to perform its Services in a timely manner causing delay or disruption to the PROJECT schedule; or 4) any amounts equal to the District's costs caused by the CONSULTANT's errors or omissions, willful or reckless misconduct, or other breach of this AGREEMENT.

ARTICLE 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. 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 agree 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. 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.

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. The reports and/or other documents that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's consultants in accordance with this AGREEMENT, 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 of 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 – 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 expenses under Workers' Compensation acts and other employee benefit acts with respect to CONSULTANT's

employees or CONSULTANT's subcontractor's employees resulting from 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 consultants who are directly employed by the DISTRICT; and

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.

2. Limitation of Liability

a. Neither Party shall be liable to the other Party for any consequential, exemplary, special, incidental, or punitive damages sounding in contract or tort except as may arise from breach of a PARTY's work product and intellectual property obligations or as may be necessary to provide indemnification against actions or claims asserted by third parties.

b. In no event shall CONSULTANT's aggregate liability arising out of or related to this Agreement and the services provided hereunder, whether sounding in contract or tort (including negligence) or otherwise, exceed the amount of the Fixed Fees actually paid under this Agreement.

3. Estimates and Projections. Estimates and projections relating to development budgets, finance, and other aspects of CONSULTANT's analysis, which may be reduced to writing in the Services, will be based upon reasonable assumptions, information provided to B&D by Client or other sources, reasonable analytical techniques, and professional judgment. Actual costs and financial performance, however, will be influenced by market and other external factors. Accordingly, B&D does not represent or warrant that its estimates and projections will reflect Client's actual costs and financial performance.

4. {RESERVED}

5. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE VII, SECTIONS 1-2 (OR SECTION 3 AS APPLICABLE) OF THIS AGREEMENT SHALL BE THE SOLE DEFENSE, INDEMNITY AND HOLD HARMLESS AGREEMENTS BETWEEN THE PARTIES, PROVIDED SAME IS IN COMPLIANCE WITH CALIFORNIA CIVIL CODE §§2772 THROUGH 2784.5, AS APPLICABLE. SHOULD ARTICLE VII, SECTIONS 1-2 (OR SECTION 3 AS APPLICABLE) OF THIS AGREEMENT BE IN CONFLICT WITH ANY OF THE AFORESAID STATUTES, ARTICLE VII, SECTIONS 1-2 (OR SECTION 3 AS APPLICABLE) OF THIS AGREEMENT SHALL BE READ TO INCLUDE AND BE CONSISTENT THEREWITH. ANY OTHER DEFENSE, INDEMNITY AND/OR HOLD HARMLESS PROVISIONS THAT ARE ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

6. ANY ATTEMPT TO LIMIT THE CONSULTANT'S LIABILITY TO THE DISTRICT IN AN ATTACHED EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE DISTRICT AND THE CONSULTANT.

7. 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 ONE MILLION DOLLARS (\$1,000,000) per occurrence and 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, including contractual liability, with limits of TWO MILLION DOLLARS (\$2,000,000), per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least two (2) 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 VII, Section 6(b) above shall name the DISTRICT and its officers, agents and employees as additional insureds; and 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 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 may 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 scope to complete the Services articulated in **EXHIBIT “A”** where the requests for additional scope 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; and
- 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 – 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. 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.
- c. 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.

d. Approved SUB-CONSULTANTS shall not be changed without the prior written consent of the DISTRICT. CONSULTANT shall promptly obtain written DISTRICT approval of any replacement or new SUB-CONSULTANT working on this project. Nothing in this Agreement shall create any contractual relation between the DISTRICT and any SUB-CONSULTANT employed by the CONSULTANT under the terms of this agreement.

e. If any designated lead or key person fails to perform to the satisfaction of the DISTRICT, then upon written notice the CONSULTANT shall immediately remove that person from the PROJECT and provide a temporary replacement. CONSULTANT shall within fifteen (15) workdays, provide a permanent replacement person acceptable to the DISTRICT. DISTRICT may condition its approval of replacement personnel upon a reasonable transition period wherein new personnel will learn the Program and Projects and get “up to speed” at CONSULTANT’s cost.

2. Classification. To the extent it is determined under applicable law that CONSULTANT fails to meet the statutory prerequisites for classification as a professional expert operating under a personal services agreement, CONSULTANT resigns any and all rights and privileges derived from this AGREEMENT and any resulting relationship, which resignation is deemed accepted under such circumstances by the DISTRICT.

3. 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.

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

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. Governing Law. 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 AS **EXHIBIT "A"** SHALL NOT BE INTERPRETED OR CONSTRUED TO INCORPORATE SUCH TERMS INTO THIS AGREEMENT UNLESS THE DISTRICT APPROVES OF SUCH INCORPORATION IN A SEPARATE WRITING SIGNED BY THE DISTRICT. ANY REFERENCE TO SUCH BOILERPLATE TERMS AND CONDITIONS IN THE PROPOSAL OR QUOTE SUBMITTED BY THE CONSULTANT SHALL BE NULL AND VOID AND HAVE NO EFFECT UPON THIS AGREEMENT. PROPOSALS, QUOTES, STATEMENT OF QUALIFICATIONS AND OTHER SIMILAR DOCUMENTS PREPARED BY THE CONSULTANT MAY BE INCORPORATED INTO THIS AGREEMENT AS **EXHIBIT "A"** BUT SUCH INCORPORATION SHALL BE STRICTLY LIMITED TO THOSE 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. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this AGREEMENT by each reference as though fully set forth in each instance in the text hereof with the exception of those documents or provisions that are subject to the exclusions specifically set forth in this AGREEMENT.

12. 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.

13. It is mutually understood and agreed that this AGREEMENT shall be binding upon the DISTRICT and its successors and upon the CONSULTANT, its partners, successors, executors, and administrators. Neither this AGREEMENT, nor any monies due or to become due thereunder, may be assigned by the CONSULTANT without the written consent and approval of the DISTRICT.

14. 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.

15. 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

16. 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.

17. 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>.

18. 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 <http://www.rsccd.edu/Trustees/Pages/AR-3581.aspx>.

19. 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:

Brailsford & Dunlavey, Inc.
Attn: Jeffrey D. Turner
Executive Vice President
535 Anton Blvd., Suite 850
Costa Mesa
Telephone: 949-861-8340

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

21. 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.

22. 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.

23. 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.

24. Parking. CONSULTANT shall be responsible for purchasing applicable parking passes from Safety & Security Offices when the need arises to visit any of the campuses.

25. 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.

26. 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 X – 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. Electronic and Digital Signatures. 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.

Signatures on the following page

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

CONSULTANT:
BRAILSFORD & DUNLAVEY, 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 total Not-to-Exceed fee is **TWO HUNDRED NINE THOUSAND SIX HUNDRED NINETY DOLLARS (\$209,690)**. Included in this not-to-exceed fee is the following:

1. Compensation for Basic Services: The DISTRICT shall compensate the CONSULTANT for performing the Basic Services as described in Article I and in accordance with Article II a fixed fee of **ONE HUNDRED NINETY-NINE THOUSAND SIX HUNDRED NINETY DOLLARS (\$199,690)**.
2. Allowance: Included in the aforementioned fee is an allowance of **TEN THOUSAND DOLLARS (\$10,000)** for additional services and/or reimbursable expenses subject to the DISTRICT’s approval in accordance with Article II.

CONSULTANT’s hourly rates for additional services and sub-consultants, if applicable, are included in EXHIBIT “B”.

2. Fee Schedule:

TASKS	FIXED FEE	FIXED FEE (Sub)	TOTAL FIXED FEE
Task 1 Data Gathering, Surveys and Strategic Planning	\$28,140	\$4,968	\$33,108
Task 2 Developing Options and Models	\$45,875	\$42,720	\$88,595
Task 3 Facilitating and Presenting Meeting	\$27,650	\$10,580	\$38,230
Task 4 Preliminary and Final Recommendations	\$18,205	\$21,552	\$39,757
Total Fixed Fee	\$119,870	\$79,820	\$199,690

3. Project Description

Rancho Santiago Community College District is seeking a qualified Firm to provide Professional Consulting Services (“Services”) for development planning for the Centennial Education Center (“Center”) of Santa Ana College (“SAC”). The Centennial Education Center, which was opened in 1980, consists of a modular village of 47,214 gross square feet and houses Santa Ana College’s Adult Education Center. The land is leased to the District by the City of Santa Ana and the buildings are owned by the District. Terms of the lease between the City and the District call for ‘significant improvements’ to be completed to the property within four and one half (4 ½) years. The lease suggests various improvements such as a community room; and classrooms for recreational, physical fitness and other community service classes, such as yoga, dance, and similar subjects. (See attached lease agreement). In addition to the lease terms, Santa Ana College and District recognize that the Center is old and in need of major redevelopment to better address the needs of the community. Childcare is integral to the facilitation of adult education therefore the proposed facility should include the existing onsite childcare facility. The Project is located at Centennial Education Center, 2900 W. Edinger Avenue, Santa Ana, California.

SAC's College of Continuing Education has a well-defined Adult Education program and has done considerable evaluation of the physical needs of the facility which will be a solid basis for developmental planning. Less well defined are strategic plans of the City and emphasis should be made to strengthen the College/City Strategic Partnership.

Based on the results of the study, and after strategic planning meetings with the college, the study shall specifically delineate the scenario, recommendations, justification, and analysis of options specific to this site.

Project Objectives:

1. Determine if the scope of work the College desires to build is agreeable to the City, the College and to other potential partners.
2. Identify what development options the City would support.
3. Present development scenarios and strategies to assist in budgetary planning.
4. Assist in preparation of a follow-on RFQ/RFP for implementation of the site development plan, if necessary.

4. **Scope of Services:**

The District envisions the Study will minimally include the tasks identified below:

Data Gathering, Surveys and Strategic Planning:

- Evaluate the current CEC Facilities Analysis and SAC Continuing Education Facilities Plan and create a list of prioritized objectives for the college; such objectives will inform further work, guide the analysis, and assist to facilitating a final recommendation in the Study.
- Review and assess existing relevant planning documentation from RSCCD, Santa Ana College, including the College's current educational and facilities plans.
- Review layout, maps and drawings and schematics, including those for buildings in planning, design, or construction phases.
- Develop and undertake various market demand analyses and surveys to include students, employee, and community constituencies. Surveys may minimally include data to ascertain information such as:
 - Types of programs and classes desired to be offered or continued to be offered at the CEC.
 - Confirmation of Child Development Center services
- Conduct and synthesize detailed primary market research (Market Demand Study).
- Utilize, apply, and evaluate national planning standards where applicable.
- Develop, administer, and analyze a web-based Student and/or Community Survey if needed.
- Conduct focus groups with students and various stakeholder groups when needed.
- Perform off-campus market research and analysis.

Developing Planning Options and Models:

- Validate current SAC College of Continuing Education Facilities Plan, dated 5-21-2019 and CEC Facility Analysis and Alternatives, SAC, dated 7-19-2019.
- Develop a comprehensive site master plan including operating parameters, as well as conceptual capital budgets and development schedules to assist the District / College in ascertaining financial commitments, operational responsibilities and both short- and long-term impacts to developing and operating the site.
- Test run scenarios that include capital costs and ongoing operational and maintenance costs for budgeting purposes.
- Provide a per square foot estimate of proposed facilities. Estimates may be developed using JCAF 32.
- Prepare a recommended implementation schedule based on input from the District / College.

Facilitating and Presenting at Meetings:

- Conduct a kickoff session with District and College Project Workgroup (which does not yet exist but will be formed as part of the RFQ selection process).
- Participate in meetings with staff, the District and College Project Workgroup, the City of Santa Ana, and other constituent groups as needed.
- Participate and make any necessary presentations to committees and at Board of Trustee meetings if needed.
- The Firm is expected to conduct a minimum of eight (8) regularly- scheduled progress meetings with the District Facilities Department and the Project Workgroup at mutually agreed-upon intervals and times.
- The selected firm will be required to operate within the current State of California and County of Orange health guidelines pertaining to Covid-19. At the present time, all meetings are virtual.
- All meetings will be conducted in English and there is no requirement for bilingual communication.

Preliminary and Final Recommendations:

- The Firm will present preliminary validation findings and preliminary market research and will discuss redevelopment concepts in a meeting with the District Facilities, the Workgroup, and other District/Campus committees.
- Present a detailed project concept and financial scenarios. Work with District Facilities Department, the Project Workgroup and other District/Campus committees, as well as the City of Santa Ana as appropriate.
- Discuss the feasibility of the development, any transactional structures that may be considered viable for the District to pursue further, and/or other development options and present these preliminary findings and recommendations.
- Retain feedback from the various District constituent groups in order to finalize recommendations.

- Finalize the Development and Financial Planning Report, recommendations and compile all necessary documents to share with the District and college to document the process undertaken as part of the assessment.

5. **Schedule of Work:**

The below schedule is subject to change.

Contract Approval by Board of Trustees (anticipated)	On or about June 21, 2021
Work Period (minimum of twelve (12) regularly scheduled progress meetings with DO Facilities and Workgroup included).	39 weeks
Firm and District review of draft final report (1 week)	February 2022
Presentation of study results to District / College	March 2022
Presentation of final study results to Board of Trustees	April 2022

EXHIBIT “B” – HOURLY RATES

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

Position:	Name of Personnel:	Hourly Rate:
Brailsford & Dunlavey, Inc.		
Executive Vice President	Jeff Turner	\$460
Vice President	Matt Bohannon	\$365
Senior Associate	Andrew Perez	\$285
Project Analyst	TBD	\$205
QC & Graphic Design	TBD	\$245
Subconsultant – Moore Ruble Yudell Architects & Planners		
Principal	Maria Violich	\$235
Senior Staff I	Carissa Oyedele	\$210
Staff I	Nozomu Sugawara	\$175
Staff V	Kunheng Han	\$110

Any changes to personnel shall be in accordance per Article IX, section 1 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.

EXHIBIT “C” – 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 enterprises as part of the SERVICES.

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 “D” – LOCAL HIRE AND LOCAL BUSINESS INFORMATION

Reserved – already completed as part of RFQ/RFP #2021-295