

CONSULTANT SERVICES AGREEMENT

This AGREEMENT is made and entered into this **12th** day of **JANUARY** in the year **2021** (“EFFECTIVE DATE”), between the RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT, hereinafter referred to as (“DISTRICT”), and **CONVERSE CONSULTANTS**, 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;

WHEREAS, DISTRICT desires to obtain specialized services and/or advice for **Environmental Import Materials Testing** for the **Russell Hall Replacement (Health Sciences) project 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 AGREEMENT shall commence on **JANUARY 12, 2021** and shall terminate when the notice of completion for the Construction Work is recorded, Division of State Architect Certification, and project close-out has been achieved, unless terminated or otherwise canceled. 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. The CONSULTANT shall not be responsible for acts and/or omissions of any other party or parties involved in the design of the PROJECT or the failure of any contractor or subcontractor to construct any aspect of the PROJECT in accordance with the contract documents. The CONSULTANT is not authorized to modify, waive, eliminate, or add any requirement to the PROJECT's specifications or other contract documents, nor to approve or accept any portion of the construction work, unless specifically authorized in writing by the DISTRICT or its authorized representative. The CONSULTANT shall not have the right to reject work or the right to stop work, except for such periods as may be required to conduct sampling, testing or inspection of work covered by this AGREEMENT.

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. {Reserved}
- d. Other DISTRICT requested items as requested in writing.

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

authorization of the DISTRICT. The DISTRICT shall make payment to the CONSULTANT of the approved invoiced amount within forty-five (45) days of the DISTRICT's receipt of the invoice.

5. 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. 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 Rancho Santiago Community College District
Environmental Import Materials Testing
Project ID#2398 Russell Hall Replacement (Health Sciences)

Project. If requested by the DISTRICT, the CONSULTANT shall within ten (10) days of such request, assemble and deliver to the DISTRICT all Documents, work product, instruments of service, and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the CONSULTANT under this Agreement. The CONSULTANT shall deliver the originals of all Documents, work product, instruments of service, and other items of a tangible nature requested by the DISTRICT pursuant to the preceding sentence; provided, however, that the CONSULTANT may, at its sole cost and expense, make reproductions of the originals delivered to the DISTRICT.

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

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

ARTICLE IV – DISPUTES

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

2. Mandatory Mediation. All claims, disputes and other matters in controversy between the CONSULTANT and the DISTRICT arising out of or pertaining to this Agreement, excepting therefrom claims for indemnity, shall be submitted for resolution by non-binding mediation conducted under the auspices of the JAMS or other mutually agreeable dispute resolution service and their respective governing Construction Mediation Rules in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the DISTRICT or the CONSULTANT commencing arbitration proceedings pursuant to Paragraph 3 below.

3. Arbitration. All claims, disputes or other matters in controversy between CONSULTANT and DISTRICT arising out of or pertaining to this Agreement which are not fully resolved through the mandatory mediation set forth in Paragraph 2 above shall be settled and resolved by binding arbitration before one (1) retired judge conducted under the auspices of the JAMS or other mutually agreeable dispute resolution service. Any arbitration hereunder shall be conducted in the JAMS' Regional Office or other ADR service's office closest to the Site. The award rendered by the Arbitrator(s) shall be final and binding upon the DISTRICT and the CONSULTANT and shall be supported by law and substantial evidence pursuant to California Code of Civil Procedure §1296. Any written arbitration award that does not include

findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 shall be invalid and unenforceable. The DISTRICT and CONSULTANT hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the award if, after review of the award, the Court determines either that the award is not supported by substantial evidence or that it is based on an error of law. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. Furthermore, if any claim or dispute is asserted by the Project Architect, Construction Manager if any, the Contractor and/or the DISTRICT relating to the Project and arising in whole or in part out of this Agreement, the services provided by or through the CONSULTANT hereunder or the Instruments of Service prepared by or through the CONSULTANT, CONSULTANT and DISTRICT agree that any arbitration proceedings initiated between CONSULTANT and DISTRICT hereunder shall, without the need for an order of the Court, be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute by and between the aforementioned parties, regardless of the dispute resolution service selected.

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

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

6. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE III OF THIS AGREEMENT SHALL GOVERN ALL TERMINATION RIGHTS AND PROCEDURES BETWEEN THE PARTIES. ANY TERMINATION PROVISION THAT IS ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

ARTICLE V – REPORTS AND/OR OTHER DOCUMENTS

1. 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, defend, 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 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. The CONSULTANT, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings, arising out of Article VII, 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 VII, 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.

3. If the services provided pursuant to this AGREEMENT will be performed by a licensed architect, landscape architect, engineer, or land surveyor, the following indemnity requirements in this Article VII, Section 3 shall apply. To the fullest extent permitted by California law and in accordance with California Civil Code section 2782.8, CONSULTANT shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees and members

(“Indemnified Parties”) from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney’s and consultants’ fees and causes of action to property or persons, including personal injury and/or death (“Claim(s)”), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of CONSULTANT, its directors, officials, officers, employees, contractors, subcontractors, consultants, sub-consultants or agents arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes CONSULTANT’s liability as to the active or sole negligence or willful misconduct of the District.

- 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: If arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, the CONSULTANT shall indemnify and hold the DISTRICT harmless from any 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. The CONSULTANT, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the DISTRICT (other than professional negligence covered by section c below), its officers, agents or employees that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, 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; and

- c. Professional Liability: If arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, the CONSULTANT shall indemnify and hold the DISTRICT harmless from any loss, injury to, 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 PROJECT, including injury or damage either on or off DISTRICT property; but not for any loss, injury, death or damages caused by sole or active negligence, or willful misconduct of the DISTRICT. With regard to the CONSULTANT’s obligation to indemnify for acts of professional negligence, 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 brought against the DISTRICT that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT.

4. 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.

5. 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.

6. 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 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 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
Rancho Santiago Community College District
Environmental Import Materials Testing
Project ID#2398 Russell Hall Replacement (Health Sciences)

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:

Converse Consultants
Attn: Norman S. Eke
Senior Vice President
3176 Pullman Street, Ste 108
Costa Mesa, CA 92626
Telephone: 714-444-9660

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. 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:
CONVERSE CONSULTANTS

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 hourly, not-to-exceed fee is **ONE HUNDRED ELEVEN THOUSAND TWO HUNDRED AND 0/100 DOLLARS (\$111,200)**. Included in this fixed fee is the following:

1. **Compensation for Basic Services:** The DISTRICT shall compensate the CONSULTANT for the performance of all Services required under this AGREEMENT an hourly amount not-to-exceed NINETY-ONE THOUSAND TWO HUNDRED AND 0/100 DOLLARS (\$91,200). Payments will be based on monthly invoices, payable in arrears, which will set forth the hours actually worked and expenses incurred during the billing period, in accordance with ARTICLE II, Paragraph 4 of this AGREEMENT. The billing rates indicated in Exhibit "B" will be multiplied by the actual hours for each position to arrive at the total fee for each month. The CONSULTANT shall not exceed the fee without prior written authorization of the DISTRICT.
2. **Allowance:** The allowance to perform any additional services by the District is a total, not-to-exceed fee in the amount of **TWENTY THOUSAND AND 0/100 DOLLARS (\$ 20,000)**. Prior written approval by the District is required for use of the allowance for unforeseen conditions and additional services. Rates and fees are subjected to written District approval prior to commencement of additional services as described in Article VIII.

2. **Project Description**

The Russell Hall Replacement (Health Sciences) Project ("Project") is located at Santa Ana College, 1530 W. 17th Street, Santa Ana, CA 92706. The Project is a new 3-story health sciences building approximately 55,563 GSF. Please note, the scope of these services will all be done off-site, as further described below.

3. **Scope of Services**

GENERAL: The Consultant shall provide professional Environmental Import Materials Testing in accordance with specification 014524 (Add 02), for Russell Hall Replacement (Health Sciences) Project. Services for the project shall be consistent with the standard of care for the professionals performing similar scope of services. The consultant shall, at a minimum, undertake the responsibilities reasonably necessary and customarily provided by Environmental Import/Export Materials Testing Consultants. The Consultant is to ensure that all of the District's goals, standards, policies and procedures are adhered to over the course of the assignment. The Environmental Import Materials Testing services shall be governed by the requirements of the Consultant Services Agreement between the District and Consultant.

Consultant will conduct Environmental Import Materials Testing in accordance with RSCCD Specification Section 014524 to screen materials to potentially be imported to the Santa Ana College and used as fill material. Sampling will be completed at the following sites:

- **Three (3) Predetermined Commercial Facilities**
Per the RFP, it is understood that testing will be conducted at three (3) predetermined commercial facilities (Hansen Aggregate in Irwindale, Hansen

Eagle Plant in Corona and Vulcan Materials in Corona). At each of these commercial facilities, samples will be collected of three (3) separate material types (sand, aggregate, and crushed aggregate base).

- Five (5) Additional Sites
In addition to the three (3) predetermined commercial facilities, up to five (5) additional sites may be identified by the Contractor. At these contractor selected locations, it is assumed that all of the material to be sampled will be of a similar type.

Based on the Information Advisory prepared by the Department of Toxic Substances Control (DTSC) regarding Clean Imported Fill Material (Advisory), the number of samples to be collected will be as follows:

- Three (3) Predetermined Commercial Facilities
Two (2) samples will be analyzed from each of the three (3) 500 cubic yard (CY) piles of material at each of the sites (6 samples per site, 18 samples total).

- Five (5) Additional Sites
Per the Advisory, it is assumed that six (6) samples will be analyzed from each of the 2,000 CY piles of material at up to five (5) separate contractor identified locations (30 samples).

Prior to collecting samples, the material will be observed for miscellaneous materials, such as crushed concrete, asphalt, construction debris, or other potential deleterious materials. In addition, a portion of the soil samples from each location will be collected into sealable plastic bags and screened in the field for the presence of Volatile Organic Compounds (VOCs) using a Photo-ionization Detector (PID).

Each sample to be analyzed will be collected and prepared as a composite sample to be more representative of the material in the pile. A total of three (3) evenly spaced discrete samples will be collected from varying locations and depths at the stockpile for each composite sample. Soil for the analyses will be collected in laboratory-supplied 4 oz. glass jars. Sub-samples at one (1) of every three (3) discrete locations will also be collected from stockpiles of sandy or soil materials in accordance with EPA Method 5035 using Encore sample containers. It is noted that Method 5035 cannot be used on samples of aggregate since the materials will not fit into these containers.

No dedicated sampling equipment is anticipated to be used during sampling; however, if dedicated sampling equipment is used, all reusable sampling equipment will be decontaminated in accordance with industry-standard methods in between samples. All samples will be delivered to a stationary laboratory for analysis. The laboratory will be certified through the Regional Water Quality Control Board's (RWQCB's)

Environmental Laboratory Accreditation Program (ELAP) for the analyses required under this scope of work.

The laboratory will prepare a composite sample from each of the sites. Each composite sample will be prepared from three (3) discrete samples. Each composite sample will

be analyzed for the following:

- EPA Method 8015M – Total Petroleum Hydrocarbon carbon chain analysis (TPHcc; diesel and oil ranges)
- EPA Method 8270C – Semi-volatile Organic Compounds (SVOCs)
- EPA Method 6010b/7470A – Title 22 (CAM 17) Metals
- EPA Method 8082 – Polychlorinated Biphenyls (PCBs)
- EPA Method 8081A – Organochlorine Pesticides (OCPs)
- EPA Method 8141A – Organophosphorous Pesticides (OPPs)
- EPA Method 8151A – Chlorinated Herbicides (CHs)

Analysis for the following volatile compounds will be conducted from the subsample collected in accordance with EPA Method 5035, or from one (1) of the discrete samples that comprise each of the composite samples from large grained materials:

- EPA Method 8015M – TPH gasoline
- EPA Method 8260B – Volatile Organic Compounds (VOCs)

On November 5, 2020, Converse received a request from RSCCD to provide a cost per sample for the above test methods, as well as for the following:

- EPA Method 7199 – Hexavalent Chromium
- EPA Method 6020 – Arsenic and Thallium
- EPA Method 8270 SIMS – Polycyclic Aromatic Hydrocarbons (PAHs)
- EPA Method 6010 – One (1) Metal with STLC Extraction
- Polarized Light Microscopy – Asbestos

Upon receipt of the final laboratory analytical results and QA/QC data for each site, Converse will prepare a letter report clearly indicating the locations, testing methods, material types, and analytical results of the samples. All analytical results will be compared to the acceptance criteria presented in Specification Section 014524, and the reports will clearly indicate passage or failure according to these criteria. Separate reports will be prepared for each of the sites where samples are collected. All Work will be performed under the responsible charge of, and reports will be signed by, a State of California Professional Geologist (PG). The letter reports will be submitted via electronic mail in the form of a PDF file.

4. **Schedule of Work**

Activity	Duration
Pre-Tested Site Sampling	4 weeks (upon issuance of Consultant's NTP)
Contractor Selected Import Site Sampling <i>(for foundations)</i>	As-needed between Feb. 2021 – Oct. 2021
Contractor Selected Import Site Sampling <i>(for exterior hardscape)</i>	As-needed between Oct. 2022 – Dec. 2022

EXHIBIT “B” – HOURLY RATES/NOT-TO-EXCEED FEE

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:
Clerical/Accounting	Anne Marie Maldonado, Jennifer Leoppky	\$80
Drafting	Yadir Carmona, Emmanuel Carmona	\$80
Staff Professional	Kaspar Wittlinger	\$85
Senior Staff Professional	Spencer Wagner, Rodney Stansfield	\$100
Senior Geologist	Michael Van Fleet, Mark Schlueter	\$140
Senior Professional	John Ziegler, Brian Kelly	\$140
Principal Professional	Laura Tanaka, Norman Eke	\$150

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.

PRE-TESTED SITE RATES/SITE (500 CY of stockpiled material at each location):

Service	Quantity of Samples	Rate Per Sample*	Total Cost
Soil Material sample collection and testing	Not applicable for these sites per RFP		
Sand Material sample collection and testing	2 Samples at each of the 3 Sites	\$1,900	\$3,800 per Site \$11,400 for 3 Sites
Aggregate Material sample collection and testing	2 Samples at each of the 3 Sites	\$1,900	\$3,800 per Site \$11,400 for 3 Sites
Crushed Aggregate Base Material sample collection and testing	2 Samples at each of the 3 Sites	\$1,900	\$3,800 per Site \$11,400 for 3 Sites

** Rate shall inclusive of travel time, mileage (up to 200 miles), and sample media delivery to Laboratory.*

CONTRACTOR SELECTED IMPORT RATE/SITE (2,000 CY of stockpiled material at each location):

Service	Quantity of Samples	Rate Per Sample*	Total Cost
Soil Material sample collection and testing	6 Samples at each of the 5 Sites	\$1,900	\$11,400 per Site \$57,000 for 5 Sites

** Rate shall be inclusive of travel time, mileage (up to 200 miles), and sample media delivery to Laboratory*

TOTAL HOURLY, NOT-TO-EXCEED FEE:

Service		Total Hourly, NTE Fee
PRE-TESTED SITES (3 sites, 500 CY of stockpiled material at each location)		\$34,200.00
CONTRACTOR SELECTED IMPORT SITES (5 sites, 2,000 CY of stockpiled material at each location)		\$57,000.00
Other, if needed (please explain):		
TOTAL		\$91,200.00
ALLOWANCE		\$20,000.00
TOTAL AGREEMENT		\$111,200.00

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" – CSWPA

Refer to the following attached pages.