

CONSTRUCTION SERVICES AGREEMENT FORM

THIS AGREEMENT, entered into this **10th** day of **August, 2021** in the County of Orange of the State of California, by and between the Rancho Santiago Community College District, hereinafter called the "District", and **Innovative Construction Solutions, Inc.**, hereinafter called the "Contractor".

WITNESSETH that the District and the Contractor for the consideration stated herein agree as follows:

ARTICLE 1- SCOPE OF WORK: The Contractor shall furnish all labor, materials, equipment, tools, and utility and transportation services and perform and complete all work required by the Contract Documents ("Project"). It is the duty of the Contractor to complete the Work in strict accordance with the Contract Documents enumerated in Article 7 below. The Contractor shall be liable to the District for any damages arising as a result of a failure to comply with that obligation, and the Contractor shall not be excused with respect to any failure to so comply by an act or omission of the Architect, Engineer, or any public agency with jurisdiction, or representative of any of them, unless such act or omission actually prevents the Contractor from fully complying with the Contract Documents and the Contractor protests, in accordance with the Contract Documents, that the act or omission is preventing the Contractor from fully complying with the Contract Documents. Such protest shall not be effective unless reduced to writing and filed with the District office within seven (7) days of the date of occurrence of such act or omission preventing the Contractor from fully complying with the Contract Documents.

ARTICLE 2-TIME OF COMPLETION: The Contractor shall reach Substantial Completion of the Work within the Contract Time set forth in the Supplementary Conditions. It is expressly understood that time is of the essence.

The Contractor has thoroughly studied the Project and has satisfied itself that the time period for this Project was adequate for the timely and proper completion of the Project within each milestone and within the Contract Time. Further, the Contractor has included in the analysis of the time required for this Project, items set forth in General Conditions Article 8.3.2.1, Submittal Schedules, Rain Day Float, and Governmental Delay Float.

If Contractor fails to Substantially Complete the Work within the Contract Time, due allowance being made for the contingencies provided for herein, the Contractor shall become liable to the District for all loss and damage that the District may suffer on account thereof. The Contractor shall coordinate their Work with the work of all other contractors. The District shall not be liable for delays resulting from the Contractor's failure to coordinate their Work with other contractors in a manner that allows for timely completion of the Contractor's Work. The Contractor shall be liable for delays to other contractors caused by the Contractor's failure to coordinate their Work with the work of other contractors.

ARTICLE 3-LIQUIDATED DAMAGES: It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the Contractor will pay the District the sum of **One Thousand Five Hundred Dollars and Zero Cents (\$1,500.00)** per calendar day for each and every day of delay beyond the Contract Time set forth in the Supplementary Conditions (inclusive of Milestones that are critical on the Critical Path or noted as critical to the District) as liquidated damages and not as a penalty or forfeiture. In the event Liquidated Damages are not paid, the Contractor further agrees that the District may deduct such amount thereof from any money due or that may become due the Contractor under the Contract (See Article 9.6 and 2.2 of the General Conditions). This Article shall not be construed as preventing the District from the recovery of other damages under the Contract Documents.

ARTICLE 4-CONTRACT PRICE: The District shall pay to the Contractor as full consideration for the faithful performance of the Contract, subject to any additions, deductions, or allowances as provided in the Contract Documents, the fixed price lump sum of **Three Million Four Hundred Forty-Three Thousand Eight Hundred Fifty-Six Dollars and Zero Cents (\$3,443,856.00)**. Payment shall be made as set forth in the General Conditions.

Should any Change Order result in an increase in the Contract Price, the cost of such Change Order shall be agreed to in advance by the Contractor and the District, subject to the monetary limitations set forth in Public Contract Code Section 20659. In the event that the Contractor proceeds with a Change in work without an agreement between the District and the Contractor regarding the cost of a Change Order, the Contractor waives any Claim of additional compensation for such additional work.

ARTICLE 5-HOLD HARMLESS AGREEMENT: The Contractor shall defend, indemnify and hold harmless the District, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, the Contractor shall protect and defend, at their own expense, the District, Architect, Construction Manager, Inspector, the State of California and their officers, employees, agents and independent contractors from any legal action including attorney's fees or other proceeding based upon such act, omission, breach or as otherwise required by this Article.

Furthermore, the Contractor agrees to and does hereby defend, indemnify and hold harmless the District, Architect, Construction Manager, Inspector, the State of California and their officers, employees, agents and independent contractors from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of:

A. Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the District.

Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Contractor or any person, firm or corporation employed by the Contractor, either directly or by independent contract, including all damages or injury to or death of persons, loss (including theft) or loss of use of any property, sustained by any person, firm or corporation, including the District, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage occurs 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.

Any dispute between the Contractor and the Contractor's Subcontractors/Suppliers/Sureties, including, but not limited to, any failure or alleged failure of the Contractor (or any person hired or employed directly or indirectly by the Contractor) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

The Contractor, at their 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, its officers, agents or employees, on account of or founded upon any cause, damage, or injury identified herein Article 5 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.

The Contractor's and Subcontractor's obligation to defend, indemnify and hold harmless the Owner, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors hereunder shall include, without limitation, any and all claims, damages, and costs for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any warranty, express or implied; (3) failure of the Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; (4) products installed in or used in connection with the Work; and (5) any claims of violation of the Americans with Disabilities Act (ADA).

ARTICLE 6-PROVISIONS REQUIRED BY LAW: Each and every provision of law and clause required to be inserted in this Contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

ARTICLE 7-COMPONENT PARTS OF THE CONTRACT: The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

1. Designated Subcontractors List
2. Iran Contracting Act Certification
3. Disabled Veterans Business Enterprise (DVBE) Participation Statement
4. Notice of Award Letter
5. Escrow Agreement for Security Deposit In Lieu of Retention (if applicable)
6. Construction Services Agreement Form
7. Performance Bond
8. Labor and Materials Payment Bond
9. Submittal of Certified Payroll Records to Labor Commissioner
10. Insurance Documents & Endorsements
11. Workers' Compensation
12. Drug-Free Workplace Certification
13. Contractor's Certificate Regarding Alcoholic Beverage & Tobacco-Free Campus Policy
14. Asbestos & Other Hazardous Materials Certification
15. W-9
16. Certificate of Substantial Completion
17. Warranty Guarantee Form
18. Local Hire and Local Business Contractor Close-Out Certification
19. Disabled Veterans Business Enterprise (DVBE) Participation Close-Out Statement
20. General Conditions
21. Supplementary Conditions
22. Plans
23. Specifications
24. Geotechnical Report
25. Site Survey
26. Soil Management Plan
27. All Addenda as Issued.

All of the above-named Contract Documents are intended to be complementary. Work required by one of the above-named Contract Documents and not by others shall be done as if required by all.

ARTICLE 8-PREVAILING WAGES: Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the Contract as determined by the Director of the Department of Industrial Relations. The schedules of rates are available from Department of Industrial Relations' website. The following are hereby referenced and made a part of this Agreement and the Contractor stipulates to the provisions contained therein.

1. Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 et seq.)
2. California Code of Regulations, Title 8, Chapter 8, Subchapters 3 through 6 (Section 16000 et seq.)

ARTICLE 9-RECORD AUDIT: In accordance with Government Code Section 8546.7 (and Davis Bacon, if applicable) and Article 13.11 of the General Conditions, records of both the District and the Contractor shall be subject to examination and audit for a period of five (5) years after a Final Retention Payment or the Recording of a Notice of Completion, whichever occurs first.

ARTICLE 10-CONTRACTOR'S LICENSE: The Contractor must possess throughout the Project a current and valid Class A Contractor's License, issued by the State of California.

IN WITNESS WHEREOF, this Agreement has been duly executed by the above-named parties, on the day and year first above written.

CONTRACTOR
Innovative Construction Solutions, Inc.

RANCHO SANTIAGO COMMUNITY
COLLEGE DISTRICT

By:
Title:

By: Iris I. Ingram
Title: Vice Chancellor, Business Services

Date
#1000003958

Date

DIR Project ID#

Contractor's DIR Registration #