

**SAN DIEGO COMMUNITY COLLEGE DISTRICT
CONSULTANT AGREEMENT**

THIS AGREEMENT is made and entered into this ____ day of _____, _____ at San Diego, County of San Diego, State of California, by and between the San Diego Community College District, hereinafter called "District", and _____, hereinafter called "Consultant".

WITNESSETH:

WHEREAS, Government Code Section 53060 authorizes the District to contract with persons to furnish services and advice to District in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, Consultant represents that he/she is specially trained, experienced, and competent to provide such special services and to give the advice called for by this Agreement; and

WHEREAS, District has determined that it does not have on its staff employees qualified to provide such services, and has determined that it has a need to enter into this Agreement with Consultant for the special services and advice described herein;

NOW, THEREFORE, it is mutually agreed by the parties hereto as follows:

Article 1. Hiring of Consultant. District hereby contracts with consultant to perform the necessary professional services and advice as hereinafter set forth.

Article 2. Consultant's Services.

(a) Consultant hereby agrees to perform the professional services set forth in Exhibit "A", attached hereto and incorporated herein by reference, to the satisfaction of District.

(b) Consultant shall keep District's representative, _____, fully informed as to the progress of the work and shall submit to District such oral and written reports as District may specify.

Article 3. Time of Performance and Term of Agreement. The services called for under this Agreement shall be provided by Consultant during the period commencing on _____, _____ and ending on _____, _____. It shall be expressly understood by Consultant that time is of the essence of this Agreement and District may terminate this Agreement in the event of unexcused delay in Consultant's performance hereunder.

Article 4. Consultant's Fee. District shall pay to Consultant for the performance of all services rendered pursuant to and during the term of this Consultant Agreement the amount not to exceed _____ \$ _____. The Payment Provision, Exhibit "B" attached hereto and incorporated herein by reference will provide a fee schedule. These fees shall include normal operating and office expenses or costs associated with completion of the work to be done. District shall not be liable for any costs or expenses paid or incurred by Consultant in performing services for the District, unless specific exception is provided herein.

Article 5. Payments. Payment terms are Net 30. Payment of Consultant's fee shall be made within 30 days of receipt of a complete and accurate invoice, following completion and acceptance of the services provided, as defined within the scope of work. Consultant agrees and acknowledges that it is Consultant's sole responsibility to report as income all compensation received from District, and to make the requisite tax filings and payments to the appropriate federal, state and local tax authorities.

Article 6. Employee Benefits. Consultant is an independent contractor and not eligible for District employee benefits. Consultant is responsible for all salaries, payments, insurance and benefits for all of its officers, agents, and employees in performing services pursuant to this agreement.

Article 7. Insurance. Without limiting or diminishing the Contractor's obligation to indemnify or hold the District harmless, Contractor shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Purchase Order or Agreement:

Article 8. Commercial General Liability. Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder. Policy shall name all Agencies, Districts, Special Districts, and Departments of the San Diego Community College District, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit/\$2,000,000 annual aggregate.

Article 9. Worker's Compensation. If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the San Diego Community College District, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

Article 10. Vehicle Liability. If vehicles or mobile equipment are used in the performance of the obligations under this Purchase Order or Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Purchase Order or Agreement or be no less than two (2) times the occurrence limit. Policy shall name all Agencies, Districts, Special Districts, and Departments of the San Diego Community College District, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

Article 11. Professional Liability (If applicable). Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Purchase Order or Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Purchase Order or Agreement and Contractor shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Purchase Order or Agreement; or 3) demonstrate through Certificates of Insurance that Contractor has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2) or 3) will continue for a period of five (5) years beyond the termination of this Purchase Order or Agreement.

Article 12. General Insurance Provisions – All Lines.

(a) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the District Risk Manager. If the District's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

(b) The Contractor's insurance carrier(s) must declare its insurance deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence such deductibles and/or retentions shall have the prior written consent of the District Risk Manager before the commencement of operations under this Purchase Order or Agreement. Upon notification of deductibles or self-insured retention's unacceptable to the District, and at the election of the District's Risk Manager, Contractor's carriers shall either; 1) reduce or eliminate such deductibles or self-insured retention's as respects this Purchase Order or Agreement with the District, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

(c) Contractor shall cause Contractor's insurance carrier(s) to furnish the San Diego Community College District with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so orally or in writing by the District Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the San Diego Community College District prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Purchase Order or Agreement shall terminate forthwith, unless the San Diego Community College District receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. **Contractor shall not commence operations until the District has been furnished original Certificate (s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.**

(d) It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the District's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

(e) The District's Reserved Rights--Insurance. If, during the term of this Purchase Order or Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work (such as the use of aircraft or watercraft) the District reserves the right to adjust the types of insurance required under this Purchase Order or Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if, in the District Risk Manager's reasonable judgment, the amount or type of insurance carried by the Contractor has become inadequate.

(f) Contractor shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Purchase Order or Agreement.

(g) The insurance requirements contained in this Purchase Order or Agreement may be met with a program(s) of self-insurance acceptable to the District.

Article 13. Audit and Inspection of Records. At any time during the normal business hours and as often as District may deem necessary, and upon reasonable notice, Consultant shall make available to District for examination at District's place of business all data, records, investigation reports and all other materials respecting matters covered by this Agreement. Consultant will permit District to audit and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement.

Article 14. Confidentiality and Use of Information.

(a) Consultant shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the District's research, development, trade secrets and business affairs, but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.

(b) Consultant shall advise District of any and all materials used, or recommended for use, by Consultant to achieve the project goals that are subject to any copyright restrictions or requirements. In the event Consultant shall fail to so advise District and, as a result of the use of any programs or materials developed by Consultant under this Agreement, District should be found in violation of any copyright restrictions or requirements, Consultant agrees to indemnify and defend District against any action or claim brought by the copyright holder.

Article 15. Administration of Agreement. This Agreement shall be administered on behalf of the parties hereto, and any notice desired or required to be sent to a party hereunder shall be addressed, as follows:

For **DISTRICT**: _____
Designated Project Manager

Campus: _____

Address: _____

AND Kelly Rosas, Manager
Business Services

Address: San Diego Community College District
3375 Camino del Rio South, Suite 270
San Diego, CA 92108

For **CONSULTANT**: _____
Project Representative

Address: _____

Article 16. Notice. 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 or certified mail, return receipt requested, with postage paid. 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 section. At the date of this Agreement, the addresses of the parties are as set forth above.

Article 17. Ownership of Work Product. All products of work performed pursuant to this Agreement, including, but not limited to, notes, tables, graphs, reports, files, computer programs, and source code, will be the sole property of District and no reproduction of any portions of the work product may be made in any form without the express written consent of District. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

Article 18. Termination for Cause. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) a material violation of this agreement by Consultant, (b) any act by Consultant exposing District to liability to others for personal injury or property damage, or (c) if Consultant is adjudged bankrupt, Consultant makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Consultant's insolvency. Written notice by District of termination for cause shall contain the reasons for such intention to terminate and unless within five (5) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the five (5) days cease and terminate.

In the event of such termination, the District may secure the required services from another consultant. If the cost to the District of obtaining the services from another consultant exceeds the cost of providing the service pursuant to this Agreement, the excess cost may be charged to and collected from Consultant. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Written notice by District shall be deemed given when received by the other party or no later than five (5) days after the day of mailing, whichever is sooner.

In the event of such termination, Consultant shall be paid the reasonable value of satisfactory services rendered up to the date of receipt of the notice of termination, less any payments theretofore made, as determined by District, and the Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement in the event of such termination, except as set forth herein.

Also, at the time of such termination, all finished or unfinished documents, data, studies, drafts, surveys, drawings, maps, reports, and other materials prepared by Consultant shall, at the option of the District, become the property of District.

Article 19. Termination for Convenience. Either party may terminate this Agreement at any time and for any reason by giving written notice to the other party of such termination, and specifying the effective date thereof, at least thirty (30) days prior to the effective date.

If the Agreement is terminated as provided in this Section, Consultant shall be entitled to receive compensation for any satisfactory work completed up to the receipt by Consultant of notice of termination, less any payments theretofore made, and for satisfactory work completed between the receipt of notice of termination and the effective date of termination pursuant to a specific request by District for the performance of such work.

Also, at the time of such termination, all finished and unfinished documents and other materials described hereinabove shall, at the option of District, become District's sole and exclusive property.

Article 20. Status of Consultant. It is agreed that District is interested only in the results obtained from service hereunder and that Consultant shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. Consultant shall complete this Agreement according to its own methods of work which shall be in the exclusive charge and control of Consultant and which shall not be subject to control or supervision by the District, except as to the results of the work. Consultant is, for all purposes arising out of this Agreement, an independent contractor, and neither Consultant nor its employees shall be deemed an employee of the District for any purpose. It is expressly understood and agreed that Consultant and its employees shall in no event be entitled to any District benefits to which District employees are entitled, including, but not limited to overtime, retirement benefits, insurance, vacation, worker's compensation, sick or injury leave or other benefits.

Article 21. Hold Harmless. District shall not be liable for, and Consultant shall defend and indemnify District and its officers, agents, employees and volunteers (collectively "District Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this Agreement arising either directly or indirectly from any act, error, omission or negligence of Consultant or its officers, employees, agents, contractors, licensees or servants, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of District Parties. Consultant shall have no obligation, however, to defend or indemnify District Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of District Parties.

Article 22. Conflict of Interest. Prior to execution of this contract, contractor shall disclose in writing to District any and all compensation, actual or potential, which contractor may receive in any form from a party other than the District as a result of performance of this contract by contractor. If contractor becomes aware of the potential for such compensation subsequent to the execution of this contract, contractor shall disclose such compensation within three working days of becoming aware of the potential for such compensation. Prior to or concurrent with making any recommendation of any products or service for purchase by the District, contractor shall disclose any financial interest that contractor may have in any manufacturer or provider of the recommended products or services. The term "financial interest" includes, but is not limited to, employment (current or prospective) or ownership interest of any kind and degree.

Article 23. Assignment. No portion of this Agreement or any of the work to be performed hereunder may be assigned by Consultant without the express written consent of District and without such consent all services hereunder are to be performed by Consultant, its officers, agents and employees.

Article 24. Compliance With Applicable Laws. Consultant agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Consultant, Consultant's business, equipment and personnel engaged in activities covered by this Agreement or arising out of the performance of such activities.

Article 25. Permits/Licenses. Consultant and all of Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

Article 26. Nondiscrimination in Employment. Consultant agrees that it will not engage in unlawful discrimination in employment as delineated in the California State Fair Employment and Housing Act, and Section 12940 of the California Government Code.

Article 27. Non-Waiver. The failure of District or Consultant to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement, shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

Article 28. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, invalid, or void, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

Article 29. Entire Agreement/Amendment. This Agreement and any exhibits attached hereto constitute the entire agreement between the parties and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement.

Article 30. Dispute Resolution. Any controversy or claim arising out of or related to this Agreement or the alleged breach thereof shall be sent by the claimant party ("Claimant") via registered or certified mail to the other party ("Respondent"). The Respondent must review and provide a written response to Claimant within thirty (30) days of receipt of any such claim, and any claim is deemed rejected in its entirety if not responded to within the thirty (30) day period. If the Claimant disputes the Respondent's written response, or lack of response, the Claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the Respondent shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Respondent shall provide the Claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within (sixty) 60 days after the Respondent issues its written statement. Any disputed portion of the claim, as identified by the Claimant in writing, shall be submitted to nonbinding mediation, with the Respondent and the Claimant sharing the associated costs equally. The Respondent and Claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third Party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

If mediation is unsuccessful, the Parties may pursue any and all rights in law or in equity to resolve any remaining disputes or claims. The Parties acknowledge that one such option may include binding arbitration if the Parties mutually agree to pursue arbitration at that time.

Article 31. Standard of Work. Consultant shall exercise all reasonable skill, care and diligence in the performance of their work and shall carry out all responsibilities in accordance with the highest recognized professional standards.

Article 32. Governing Law/Venue. The terms and conditions of this Agreement shall be governed by the laws of the State of California. Any action or proceeding brought by any party against any other party arising out of or related to this Agreement shall be brought exclusively in San Diego County.

Article 33. Attorney's Fees. If either party commences any legal action or proceeding to enforce, interpret or construe this Agreement, each party shall bear their own costs, including attorney fees, incurred in connection with the resolution of the dispute. "Legal action or proceeding" includes a declaratory relief action and any bankruptcy or insolvency proceedings.

Article 34. Alterations or Variance. No alterations to this Agreement or variance from the provisions hereof shall be valid unless made in writing and executed by both of the parties hereto.

Article 35. Board Approval. This Agreement shall not be valid or binding upon the District unless it has been approved by the District's Board of Trustees. Any modification or amendment of this Agreement shall not be valid or binding upon the District unless it has been approved by the District's Board of Trustees.

Article 36. Debarment. By signing this agreement, Consultant certifies that it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from providing services by any federal, state, or local governmental departments or agency.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date herein above first written.

DISTRICT

San Diego Community College
District 3375 Camino del Rio
South
San Diego, CA 92108-3883

District Project Manager
(Print)

Signature

Date

District/Campus Chair and/or Dean (Print)

Signature

Date

Kelly Rosas, Manager
Business Services

Date

CONTRACTOR

Authorized Representative (Print)

Signature

Date

E-Mail Address

