



SAN MATEO COUNTY
COMMUNITY COLLEGE DISTRICT

PROFESSIONAL SERVICES AGREEMENT

CONSULTANT: [NAME OF CONSULTANT]

This Professional Services Agreement (the “Agreement”) dated [INSERT DATE] is intended to govern the relationship between and among the San Mateo County Community College District (the “District”) and [NAME OF CONSULTANT] (hereinafter “Consultant” or “Vendor”) with regard to the services to be provided by Consultant as described herein and in subsequent Exhibits to this Agreement. The District and Consultant shall be referred to herein collectively as the “Parties” (or “Party” if singular). This Agreement shall constitute the entire agreement between the Parties, and is intended to describe all duties and responsibilities of the Parties with regard to the services to be provided hereunder. This Agreement supersedes any and all written or oral agreements between the Parties with regard to the subject-matter of this Agreement, and this Agreement may not be amended or modified except in a written instrument duly executed by the Parties hereto. To the extent this Agreement conflicts with the terms of any proposal, invoice, or other document submitted to or by either Party, the terms of this Agreement shall be controlling.

I. SCOPE OF THE SERVICES

The Services to be rendered (“Services”) by the Consultant will be described in future Exhibits under Appendix A (“Scope of Services”), which is incorporated herein by reference.

II. COMPENSATION FOR SERVICES

District shall compensate Consultant for Services properly provided under this Agreement, and will calculate the amount of said compensation based upon the values indicated in Appendix B, Compensation for Services. Notwithstanding the aforementioned, District shall not be obligated to compensate Consultant for Services performed under this Agreement in excess of the amount listed, unless otherwise agreed upon in writing by the District. Compensation for specific project proposals will be contained in future Exhibits, incorporated herein by reference.

III. SCHEDULE OF PERFORMANCE & DELIVERABLES

Consultant shall commence performance of the Services upon receipt of authorization from the District, and shall complete the Services no later than 120 calendar days after receiving authorization to proceed with the work. Should Consultant require additional time to complete the Services, Consultant will request an extension of the scheduled completion date in a letter to the District immediately upon discovery of matters requiring a time adjustment. Consultant’s letter to the District requesting additional time shall include the following: 1) a review of the progress of Consultant’s performance and progress as of the date of the letter; 2) a narrative description of the circumstances encountered by Consultant, which Consultant believes justifies an adjustment of time; and 3) a statement of the number of additional days Consultant is requesting as an adjustment to this Schedule of Performance. District shall not be obligated to grant any such request for extension of time, but will review and consider such a request in accordance with District goals and priorities. District will respond to any such request in a timely fashion and in writing. The Schedule & Deliverables for specific project proposals will be contained in future Exhibits under Appendix C, incorporated herein by reference.

IV. TERMS AND CONDITIONS

- (1) Consultant shall perform the Services in accordance with the terms and conditions of this Agreement, INCLUDING THE GENERAL TERMS AND CONDITIONS ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.
- (2) Consultant will note the appropriate **Exhibit Number & Purchase Order Number** on all invoices and correspondence, and will deliver all correspondence and/or invoices to **San Mateo County Community College District, 1700 W. Hillsdale Blvd. Build 6, San Mateo, CA 94402** immediately upon performance. Invoices shall be submitted in duplicate.
- (3) Any changes made to the printed Terms and Conditions on this Agreement shall be null and void unless approved in writing by the District.
- (4) Consultant shall comply with Appendix D.
- (5) Consultant has read and negotiated all terms incorporated in this Agreement, and expressly accepts same, including Paragraph 5 of the General Terms and Conditions relating to indemnity and liability.

V. GENERAL TERMS AND CONDITIONS

1. Agreement Force and Effect. District is not responsible for services rendered without the authority of an Agreement on this form. This Agreement shall supercede and control over all inconsistent provisions in any proposal. The provisions of this Agreement (which may include attachments) constitute the entire agreement between the Consultant and District regarding the work and services described herein. No representation, term or covenant not expressly specified in this Agreement shall, whether oral or written, be a part of this agreement. No modification of this Agreement shall be effective unless it is in writing, and is signed by the duly appointed representatives of the Parties hereto. This Agreement shall supersede all other prior purchase Agreements and agreements between Consultant and District with respect to the work and services described herein. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by a written instrument executed and approved by fully authorized representatives of District and Consultant. The headings in this Agreement are for convenience only and do not affect the construction of this Agreement.
2. Performance of Services/No Assignment. Time is of the essence in the performance of the Services. Consultant represents that it is skilled in the professional discipline necessary to perform the services ("Services") under this Agreement. Consultant will perform its Services in a skillful manner, comply fully with criteria established by District, and with applicable laws, codes, and all applicable professional standards, including by not limited to, the California Education Code and Title 24. Consultant shall not contract any portion of the Services or otherwise assign this Agreement without prior written approval of District. (Consultant shall remain responsible for compliance with all terms of this Agreement, regardless of the terms of any such assignment.) Consultant's authorized representative is the individual signing this Agreement unless Consultant otherwise informs District in writing. The granting of any payment, and any inspections, reviews, approvals or oral statements by any District representative, or certification by any governmental entity, shall in no way limit Consultant's obligations under this Agreement.
3. Records and Payment Requests. Consultant shall submit all billings with all necessary invoices or other appropriate evidence of performance, after which District shall make payment within thirty (30) days. District shall have the right to audit the Consultant's work records. Consultant shall make available to District, its authorized agents, officers, or employees, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursement charged to District, for examination. Consultant shall furnish to District, its authorized agents, officers, or employees, such other evidence or information as District may require with regard to any such expenditure or disbursement charged by Consultant. Consultant shall maintain all documents and records prepared by or furnished to Consultant during the course of performing the services for at least three (3) years following completion of the Services, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting its work under its Agreement, and invoices, payrolls, records and all other data related to matters covered by this Agreement. Consultant shall permit District to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of Agreement shall have the same rights conferred to District by this section. Such rights shall be specifically enforceable.
4. Independent Contractor. Consultant is an independent Contractor and does not act as District's agent in any capacity, whatsoever. Consultant is not entitled to any benefits that District provides to District employees, including, without limitation, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within this Agreement regarding direction apply to and concern the result of the Consultant's provision of Services not the means, methods, or scheduling of the Consultant's work. Consultant shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Services under this Agreement. Consultant shall pay all payroll taxes

imposed by any governmental entity and will pay all other taxes not specifically identified in this Agreement as District's responsibility.

5. Indemnity/Liability. To the extent of its proportionate fault, Consultant shall defend, indemnify and save the District, and all of its officers, directors, representatives, agents and employees (together "Indemnitees"), from and against any and all claims and liability of any type resulting directly or indirectly from Consultant's negligent performance of this Agreement. Consultant shall also defend, indemnify and save harmless, to the extent of its proportionate fault, the Indemnitees, from and against all claims, suits, actions, liability, damages, expense or costs of every nature and description to which the Indemnitees may be subject or put by reason of bodily injury to or death of any person or damage to any property, which directly or indirectly arises out of the Consultant's performance of this Agreement, Consultant's provision of Services, or Consultant's activities related thereto. Defense counsel retained under this section shall be subject to the Indemnitees' reasonable approval. Notwithstanding any provision of this Agreement, the Indemnitees shall not be liable, in contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with this Agreement or the Services. The Indemnitees' rights and remedies, whether under this Contract or other applicable law, shall be cumulative and not subject to limitation.
6. Conflict of Interest. Consultant represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of work and services required under this Agreement. Without limitation, Consultant represents to and agrees with District that Consultant has no present, and will have no future conflict of interest between providing District services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to District, as determined in the reasonable judgment of District.
7. Confidentiality. Any information, whether proprietary or not, made known to or discovered by Consultant during the performance of or in connection with this Agreement for District, will be kept confidential and not be disclosed to any other person. Consultant will immediately notify District in writing if it is requested to disclose any information made known to or discovered by during the performance of or in connection with this Agreement. These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services to District hereunder.
8. Ownership of Results. Consistent with Education Code Section 17316, any interest (including copyright interests) of Consultant or its contractors or subconsultants (together, "Subconsultants"), in studies, reports, memoranda, computational sheets, drawings, plans or any other documents (including electronic media) prepared by Consultant or its Subconsultants in connection with the Services, shall become the property of District. To the extent permitted by Title 17 of the United States Code, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of District. In the event that it is ever determined that any works created by Consultant or its Subconsultants under this Agreement are not works for hire under U.S. law, Consultant hereby assigns to District all copyrights to such works. With District's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities. Consultant shall, however, retain the copyright in its standard details, and grants District an unlimited license to use such details for the purposes stated herein. Should the District desire to reuse the Documents specified above and not use the services of the Consultant, then the District agrees to require the new Consultant to assume any and all obligations for the reuse of the documents and process the same through the Division of the State Consultant as the project Consultant, and the District releases Consultant and its Subconsultants from liability associated with the reuse of the documents.
9. Non-Discrimination Policy. Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, all County and District ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time. Consultant shall provide all information reasonably requested by District to verify compliance with such matters. Consultant stipulates, acknowledges and agrees that District has the right to monitor Consultant's compliance with all applicable non-discrimination requirements, and may impose sanctions upon a finding of a willful, knowing or bad faith noncompliance or submission of information known or suspected to be false or misleading.
10. Termination and Suspension. District may direct Consultant to terminate, suspend, delay or interrupt Services, in whole or in part, for such periods of time as District may determine in its sole discretion. District may issue such directives without cause. District will issue such directives in writing, and compensate Consultant for its costs expended up to the termination plus reasonable profit thereon only in the event District terminates this Agreement for District's convenience. Consultant may recover no other cost, damage, or expense. Suspension of Services shall be treated as an excusable delay. District may

terminate performance of the Services under this Agreement in whole, or from time to time in part, for default, should Consultant commit a material breach of the Agreement, or part thereof, and not cure such breach within ten (10) calendar days of the date of District's written notice to Consultant demanding such cure. In the event District terminates the Agreement for default, Consultant shall be liable to District for all loss, cost, expense, damage and liability resulting from such breach and termination. Consultant shall continue its work throughout the course of any dispute, and Consultant's failure to continue work during a dispute shall be a material breach of this Agreement. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Agreement, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof.

- 11. Execution; Venue; Limitations. This Agreement shall be deemed to have been executed in the City of San Mateo, San Mateo County, California. Enforcement of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all litigation arising from or relating to this Agreement shall be in San Mateo County, California. Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. As between the parties to this Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of District's issuance of the final Certificate for Payment, or termination of this Agreement, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.
- 12. District Responsibilities. The District shall furnish the required information and services and shall render approvals and decisions expeditiously for the orderly progress of the consultant's work. The District shall not significantly increase the budget allocated for the cost of the work without agreement of the consultant.

By signing below, I hereby warrant that I am duly authorized to enter into this binding Agreement on behalf of the entity indicated above my signature:

[NAME OF CONSULTANT]

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT

[INSERT NAME]
[INSERT TITLE]

James W. Keller
Executive Vice Chancellor

Dated _____

Dated _____

Exhibit 1

Appendix A to Professional Services Agreement

SCOPE OF SERVICES

This Appendix A is attached to and incorporated by reference into the Professional Services Agreement (the "Agreement") between the San Mateo County Community College District (the "District"), and [NAME OF CONSULTANT], (the "Consultant"), dated [INSERT DATE]. Consultant agrees to provide the following Services in accordance with the terms of the Agreement.

The Scope of Services to be provided by Consultant is described as follows:

PURPOSE

The purpose of Consultant's Scope of Services is to [DESCRIBE]

SCOPE OF WORK

The scope of work to be developed for this project consists of three primary tasks, including:

- Task 1:
- Task 2:
- Task 3:

Task 1

To accomplish Task 1, [Name of firm] will:

Task 2

To accomplish Task 2, [Name of firm] will:

Task 3

To accomplish Task 3, [Name of firm] will:

Appendix B to Professional Services Agreement

COMPENSATION FOR SERVICES

This Appendix B is attached to and incorporated by reference into the Professional Services Agreement (the "Agreement") between the San Mateo County Community College District (the "District"), and [NAME OF CONSULTANT], (the "Consultant"), dated [INSERT DATE]. Consultant agrees to provide the following services in accordance with the terms of the Agreement.

Consultant shall bill for its Services for the purposes of this Agreement to the District in accordance with the Schedule of Values as shown below. These values shall remain in place and shall not be adjusted or modified, except in accordance with the terms of this Agreement, or by way of a written instrument signed by the Parties to this Agreement. Consultant will be compensated for its properly provided Services at the following rates:

PROJECT FEE ESTIMATE

TASK	SCOPE OF WORK	AMOUNT
1.		
2.		
3.		
4.		
5.		

FEE SCHEDULE

[Attach fee schedule here]

END OF APPENDIX B

Appendix C to Professional Services Agreement

MILESTONE SCHEDULE & DELIVERABLES

This Appendix C is attached to and incorporated by reference into the Professional Services Agreement (the “Agreement”) between the San Mateo County Community College District (the “District”), and [NAME OF CONSULTANT], (the “Consultant”), dated [INSET DATE]. Consultant agrees to provide the following Schedule in accordance with the terms of the Agreement. The following table is a list of activities to be performed by Consultant, District and other parties with regard to work authorized under Appendix A to [Enter EXHIBIT # Here], Scope of Services under this Agreement, for which specific time deadlines and deliverables for performance shall be set as follows:

No.	ACTIVITY	DELIVERABLES	PARTY	MILESTONE DATE
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

END OF APPENDIX C

Appendix D to Professional Services Agreement

INSURANCE

This Appendix D is attached to and incorporated by reference into the Professional Services Agreement (the "Agreement") between the San Mateo County Community College District (the "District"), and [NAME OF CONSULTANT], (the "Consultant"), dated [INSERT NAME]. Consultant agrees to provide the following Insurance in accordance with the terms of the Agreement.

1. Consultant's Duty to Show Proof of Insurance. Prior to the execution of this Agreement, Consultant shall furnish to District Certificates of Insurance showing satisfactory proof that Consultant has taken out for the entire period required by this Agreement, as further described below, the following insurance, in a form satisfactory to District and with an insurance carrier satisfactory to District, authorized to do business in California and rated by A. M. Best & Company A or better, financial category size IX or better, which will protect those described below from claims described below which arise or are alleged to have arisen out of or result from the acts or omissions of Consultant for which Consultant may be legally liable, whether performed by Consultant, or by those employed directly or indirectly by it, or by anyone for whose acts Consultant may be liable:

1.1 Commercial General Liability Insurance

Commercial general liability insurance, written on an "occurrence" basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, products liability, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, blanket contractual liability, broad form endorsement, products and completed operations, personal and advertising liability, with per location limits of not less than \$4,000,000 annual general aggregate and \$2,000,000 each occurrence.

1.2 Business Automobile Liability Insurance

Business automobile liability insurance with limits not less than \$2,000,000 each occurrence including coverage for owned, non-owned and hired vehicles.

1.3 Workers' Compensation Insurance

Workers' Compensation Employers' Liability limits required by the laws of the State of California. Consultant's Worker's Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

1.4 Professional Liability Insurance

Professional Liability Insurance satisfying either of the two following requirements: (a) specific to this Project only, with limits not less than \$2,000,000 each claim, or (b) limits of not less than \$4,000,000 each claim and aggregate. Such Professional Liability Insurance shall apply to and insure against Consultant's negligent acts, errors or omissions in connection with services to be provided under this Agreement, and shall contain no exclusion for claims of one insured against another insured. Such Professional Liability Insurance policy shall continue to provide coverage as specified in this Paragraph for a period of five (5) years after the completion of the Services.

2. Insurance Terms and Conditions:

2.1 Status of SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT as Additional Insured:

The SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT and its Trustees, officers, officials, representatives, employees, Consultants, and agents, shall be named as additional insured on Consultant's Commercial General Liability policy, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.

2.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

2.3 Certificates of Insurance shall include the following statement: "Written notice of cancellation, non-renewal or of any material change in policy shall be mailed to District thirty (30) days in advance of the effective date thereof."

2.4 Consultant's insurance shall be primary insurance and no other insurance or self-insured retention carried or held by any named or additional insured other than that amount Consultant shall be called upon to contribute to a loss covered by insurance for the named insured.

2.5 Nothing contained herein shall be construed as limiting in any way the extent to which Consultant or any of its employees may be held responsible for payment of damages resulting from Consultant's operations.

2.6 If Consultant fails to maintain any required insurance, District may (but is not obligated to) obtain such insurance, and may deduct and retain the cost of any premium so incurred from any sums due Consultant under this Agreement.

END OF APPENDIX D