



PROFESSIONAL SERVICES AGREEMENT
[INTENDED FOR NON-DESIGN RELATED PROFESSIONAL SERVICES]

PSA No. *[INSERT NUMBER, e.g., 1]*

DATE: _____

1. IDENTIFICATION OF CONSULTANT:

CONSULTANT:
TYPE OF SERVICES:
LICENSE NO:

2. SCOPE OF THE SERVICES

2.01 Purpose Consultant shall perform _____ services for the District's _____ (**Project**).

2.02 Proposal District received from Consultant a written Proposal, dated _____, 20YY, for the Project. The scope of services portions of the Proposal were used in developing this Professional Services Agreement. In addition, under no circumstances may the Proposal change, supplement, or modify commercial terms or other items addressed in other sections of this Agreement.

2.03 Scope of Services Consultant's Services for the Project consist of _____ primary tasks, being:

- A. Task 1: _____
- B. Task 2: _____
- C. Task 3: _____

[Add more if applicable]

2.04 Specific Services

- A. Task 1 To accomplish Task 1, Consultant will: _____
- B. Task 2 To accomplish Task 2, Consultant will: _____
- C. Task 3 To accomplish Task 3, Consultant will: _____

[Add more if applicable]

3. COMPENSATION FOR SERVICES. Consultant's total compensation for the Services performed under this Agreement (**Agreement Sum**) is \$_____, to be paid as (**check one**): (1) lump sum upon completion of all Services; (2) lump sum per-Task in the amounts indicated below, payable upon completion of each Task; (3) lump sum per-Task in the amounts indicated below, payable in monthly installments not to exceed the percentage completion of each Task; (4) per attached schedule of rates and charges, up to a guaranteed not-to-exceed amount of \$_____.

TASK	AMOUNT
1.	
2.	
3.	
4.	

4. SCHEDULE OF PERFORMANCE FOR THE SERVICES. Consultant shall commence performing Services upon the District's written authorization. Consultant shall complete the Services in accordance to the milestone schedule below.

No.	ACTIVITY	MILESTONE DATE	PARTY
1.			
2.			
3.			
4.			

5. SCHEDULE OF DELIVERABLES. Consultant shall provide District with the following Deliverables:

No.	ACTIVITY	DELIVERABLES
1.		
2.		
3..		
4.		

6. TERMS AND CONDITIONS.

- 6.01** Consultant shall perform the Services in accordance with the terms and conditions of this Professional Services Agreement (**PSA**) and the following attachments (together, **Agreement**):
 - A. Appendix A – General Terms and Conditions
 - B. Appendix B – Insurance
 - C. Appendix C – Supplemental Terms and Conditions, if applicable
- 6.02** PSA number must appear on all invoices and correspondence. Send invoices by email, with PSA Number in the subject line, to San Mateo County Community College District, attention Facilities Planning and Operations, at the following email address: invoicecpd@smccd.edu.
- 6.03** Consultant has read, negotiated, and had the opportunity to review with legal counsel this Agreement. Consultant expressly accepts this Agreement and all terms and conditions provided herein including, without limitation, the defense and indemnity provisions of General Terms and Conditions ARTICLE 5.

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:

CONSULTANT: **[NAME]**

OWNER: **SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT**

Signature

Signature

Print Name & Title

Kathy Blackwood, Executive Vice Chancellor
Print Name & Title

Date

Date

Address for Notices:

Address for Notices:
3401 CSM Drive
San Mateo, CA 94402

Attention:

Attention: Kathy Blackwood, Executive Vice Chancellor

Appendix A to Professional Services Agreement

GENERAL TERMS AND CONDITIONS

ARTICLE 1 AGREEMENT FORCE AND EFFECT.

- 1.01** District is not obligated to pay for any Consultant services rendered without an executed Agreement. This Agreement constitutes the entire agreement between District and Consultant regarding the Consultant's Services described herein. The PSA and Appendices A and B (and Appendix C, if applicable) shall supersede and control over all inconsistent provisions in any proposal (even if attached to the PSA), invoice, District Purchase Order (including any Terms and Conditions attached thereto), or other document submitted to or by either Party. No representation, term, or covenant not expressly specified in this Agreement shall, whether oral or written, be a part of this Agreement. 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.

ARTICLE 2 PERFORMANCE OF SERVICES/NO ASSIGNMENT/DELIVERABLES.

- 2.01** Time is of the essence in the Consultant's performance of Services. Consultant represents that it is skilled in the professional discipline necessary to perform the Services pursuant to this Agreement. Consultant will perform its Services in a skillful manner, comply fully with District established criteria, and with applicable laws, codes, and all applicable professional standards including, without limitation, the California Education Code and Title 24 of the California Code of Regulations. Consultant shall not subcontract any portion of the Services or assign this Agreement without the District's prior written approval. (Consultant shall remain responsible for compliance with all terms of this Agreement, regardless of the terms of any such transaction in violation of the provision, and any such transaction shall be null and void.) Consultant's authorized representative is the individual signing this Agreement unless Consultant informs District in writing otherwise. The District's approving payment, or conducting inspections, reviews, approvals, or oral statements, or any governmental entity's certification, shall in no way limit Consultant's obligations under this Agreement.
- 2.02** Consultant shall submit to District all of Consultant's, and its contractors' and subconsultants' (together, **Subconsultants**) Deliverables in manipulable native/source electronic files, in such formats (e.g., Microsoft Word, Excel, AutoCAD, Revit, etc.) as District may request. If requested, Deliverables shall also be in PDF electronic format and hard copy format. All Deliverables shall be provided by the times specified in PSA Section 4, Schedule Performance for the Services, or as otherwise directed by District.

ARTICLE 3 RECORDS AND PAYMENT REQUESTS.

- 3.01** If the PSA entitles Consultant to progress payments, Consultant shall submit to District within 30 calendar days of the month for which services are invoiced all billings with all necessary invoices and other appropriate evidence of performance. District shall make payment within 30 calendar days after receiving all documentation supporting the Consultant's monthly request for payment. District shall have the right to audit the Consultant's work records. Consultant shall make available to District, its authorized agents, officers, or employees, within seven calendar days from the date of the District's written request 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.
- 3.02** Consultant shall maintain all documents and records prepared by or furnished to Consultant during the course of performing the Services for at least three years following completion of the Services, except that all such items pertaining to hazardous materials shall be maintained for at least thirty years. Such records include, without limitation, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting its services under its Agreement, and invoices, payrolls, records and all other data related to matters covered by this Agreement.

- 3.03** 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 Article. Such rights shall be specifically enforceable.

ARTICLE 4 INDEPENDENT CONTRACTOR.

- 4.01** 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 Services. Consultant shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Services under this Agreement. Consultant is solely responsible for paying all payroll taxes imposed by any governmental entity, and to pay all other taxes not specifically identified in this Agreement as District's responsibility.

ARTICLE 5 DEFENSE AND INDEMNITY.

- 5.01** To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and, if applicable, 2782.8), Consultant shall defend (including providing legal counsel reasonably acceptable to District, at no cost to District), indemnify, and hold harmless District and its Board of Trustees, officers, agents, departments, officials, representatives and employees (collectively **Indemnitees**) from and against any and all claims, suit, action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee of Consultant or any Subconsultant), expense, and liability of every kind, nature and description, at law or equity (including, without limitation, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively, **claims**), that arise out of, pertain to, or relate to (1) the negligent performance of Services under this Agreement, (2) any negligence, recklessness, or willful misconduct of Consultant, its employees or agents, any Subconsultant, or any person or entity for whom it is legally liable, (collectively, **Consultant Parties** or **Consultant Party**), or (3) infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by the District, or any of the other Indemnitees, of articles or services supplied or specified by Consultant in the performance of this Agreement (collectively **Liabilities**). Such obligations to defend, hold harmless, and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused, in whole or in part, by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply to all other Liabilities.
- 5.02** Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities in favor of District and other Indemnitees in the exact form and substance of those contained in this Agreement.
- 5.03** The Indemnitees' rights and remedies, whether under this Agreement or other applicable law, shall be cumulative and not subject to limitation.

ARTICLE 6 LIMITATIONS OF LIABILITY.

- 6.01** Except as otherwise provided in this ARTICLE 6, neither party shall be liable to the other or the other's officers, directors, affiliates or employees for any special, consequential, incidental, or punitive damages including, without limitation, claims of loss of use, data, profits, or revenue, regardless of the form of action or the theory of recovery.
- 6.02** Except as otherwise provided in this ARTICLE 6, and to the extent permitted by applicable law, Consultant's maximum liability to District with respect to Services performed pursuant to this Agreement shall not exceed the greater of (i) the total compensation paid to Consultant under this Agreement, and (ii) the amount of valid and collectible insurance.
- 6.03** Notwithstanding the foregoing, the foregoing limitations shall not apply (i) to any defense or indemnity obligation for third-party claims under this Agreement arising from personal injury, death or property damage caused by Consultant or any Consultant Party, (ii) any contractual liquidated damages, or (iii) any claim arising from or relating to the gross negligence or willful misconduct of Consultant or any Consultant Party.

ARTICLE 7 CONFLICT OF INTEREST.

7.01 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 Services required under this Agreement. Without limitation, Consultant represents to District, and agrees with District, that Consultant has no present conflict of interest, and will have no future conflict of interest in providing District the Services in this Agreement with any interest Consultant may presently have, or may have in the future, with respect to any other person or entity (including, without limitation, any federal or state wildlife, environmental or regulatory agency) that has any interest adverse or potentially adverse to District, as determined in the reasonable judgment of District.

ARTICLE 8 CONFIDENTIALITY.

8.01 Any information, whether proprietary or not, made known to or discovered by Consultant while performing Services pursuant to or in connection with this Agreement, will be kept confidential and not be disclosed to any other person without the District's written authorization. Consultant will immediately notify District in writing if requested to disclose any information made known to or discovered during the performance of Services or in connection with this Agreement. This confidentiality provision shall remain fully effective indefinitely after completion or termination of Consultant's Services to District hereunder.

ARTICLE 9 OWNERSHIP OF RESULTS.

9.01 Consistent with Education Code, Section 17316, any interest (including copyright interests) of Consultant or its 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 District's property. 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 District's property. 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: (1) 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 Architect as the project Consultant, (2) the District releases Consultant and its Subconsultants from liability associated with the reuse of the documents, and (3) the District will indemnify and hold Consultant harmless from and against any claims, damages, losses, and expenses including attorneys' fees, arising out of or resulting from, in whole or in part, the reuse of the Documents.

ARTICLE 10 NON-DISCRIMINATION POLICY.

10.01 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 American with Disabilities Act (42 U.S.C. § 12010, et seq.) 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 within 30 calendar days 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.

ARTICLE 11 TERMINATION AND SUSPENSION.

11.01 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 with or without cause (i.e., for convenience). District will issue such directives in writing. Consultant will be entitled to compensation for (1) its Services rendered, and (2) reasonable profits up to the termination, provided District

terminates this Agreement for District's convenience. Consultant may recover no other cost, damage, or expense including, without limitation, the full contract value or profit that Consultant would have earned had the Services been fully performed. Suspension of Services shall be treated as an excusable delay to which the Consultant may be entitled to reasonable compensation for expenses incurred during the delay, subject to reasonable proof to the District's satisfaction.

- 11.02** District may terminate for default Consultant's right to proceed with Services under this Agreement, in whole or in part, should Consultant commit a material breach of the Agreement and not cure such breach to the District's satisfaction within ten calendar days of District's written notice to Consultant demanding such cure. In the event District terminates for default Consultant's right to proceed under this Agreement, Consultant shall be liable to District for all loss, cost, expense, damage, and liability resulting from such breach and termination.
- 11.03** Provided that District pays all undisputed amounts in accordance with this Agreement, Consultant shall continue its Services throughout the course of any dispute. Consultant's failure to continue Services during a dispute shall constitute a material breach of this Agreement.
- 11.04** 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 either 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.

ARTICLE 12 NOTICES; EXECUTION; VENUE; LIMITATIONS.

- 12.01** Each party shall send notices to each other in a writing, sent by certified mail return receipt requested, by overnight courier or delivery service with signature required, or personal delivery to the addresses contained underneath their respective signatures in the PSA, or to such other place as either party may similarly in writing designate to the other. Notices shall be effective three business days after mailing by certified mail, or upon delivery by overnight courier or delivery service (or, if delivery is not during regular business hours on a business day, then on the next business day) or personal delivery during regular business hours during a business day.
- 12.02** This Agreement shall be deemed to have been executed in the City of San Mateo, San Mateo County, California. 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.

END OF APPENDIX A

Appendix B to Professional Services Agreement

INSURANCE

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. Said insurance shall be 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 X or better. Consultant's insurance shall protect those described below from claims described below that arise, or are alleged to have arisen, out of or resulting from Consultant's acts or omissions for which Consultant may be legally liable, whether performed by Consultant, or by those employed directly or indirectly by Consultant, any Subconsultant, 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 limits of not less than \$2,000,000 annual general aggregate and \$1,000,000 each occurrence.
 - 1.2 **Excess Liability Insurance**
Excess liability insurance, on an "Occurrence" form, coverage should apply and follow form over primary coverages shown above. Limits must apply per any one occurrence and general aggregate annually; and Annual Aggregate Products and Completed Operations. The following are required excess limits of liability: \$2,000,000 Bodily Injury and Property Damage Liability, \$2,000,000 General Aggregate, \$2,000,000 Products and Completed Operations.
 - 1.3 **Business Automobile Liability Insurance**
Business automobile liability insurance with limits not less than \$1,000,000 each occurrence including coverage for owned, non-owned and hired vehicles.
 - 1.4 **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.
 - 1.5 **Professional Liability Insurance**
Professional Liability Insurance satisfying either of the two following requirements: (a) specific to this Project only, with limits not less than \$1,000,000 each claim, or (b) limits of not less than \$2,000,000 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 be maintained for a period of five years after the Completion of the Services.

2. Subconsultant Insurance [Optional—to be addressed on an Agreement-By-Agreement basis]

2.1 The Subconsultants identified below shall maintain all insurance required to be maintained by Consultant, with minimum limits as indicated:

Subconsultant	CGL Amount	Automobile Amount	Professional Amount
	\$1M per Occur/ \$2M Agg	\$1M	\$1M

3. Insurance Terms and Conditions

- 3.1 Status of SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT as Additional Insured:
The SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT and its Trustees, officers, officials, agents, representatives, employees, and volunteers, shall be named as additional insureds on Consultant’s primary and excess 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.
- 3.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the monetary limits of Consultant’s insurance policy.
- 3.3 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 30 calendar days in advance of the effective date thereof.”
- 3.4 Consultant’s (and if applicable Subconsultant’s) insurance shall be primary insurance and no other insurance or self-insured retention carried or held by any named or additional insured shall be called upon to contribute to a loss covered by the primary insurance. Any District insurance shall be excess and noncontributing to any insurance available to the District as an additional insured under Consultant’s (or any Subconsultant’s) primary and excess Commercial General Liability policies provided pursuant to this Agreement.
- 3.5 Nothing contained herein shall be construed as limiting in any way the extent to which Consultant, Subconsultants or any of their employees may be held responsible for payment of damages resulting from the Services.
- 3.6 If Consultant (or any Subconsultant if applicable) 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 B

Appendix C to Professional Services Agreement

**SUPPLEMENTAL TERMS AND CONDITIONS
*[Optional]***

SAMPLE