

PROFESSIONAL SERVICES AGREEMENT (PSA)

(This agreement is not a construction contract within the meaning of Civil Code section 2783, and is not an agreement for the provision of construction services within the meaning of Public Contract Code section 20651.)

THIS AGREEMENT (hereinafter "Agreement") between **San Jose-Evergreen Community College District**, a public educational agency ("District") and _____ ("Consultant") is effective this day _____ (Date) between the Consultant and District.

RECITALS

WHEREAS, District is in need of professional services Consultant provides; and

WHEREAS, Consultant warrants and represents to District that Consultant has the experience, expertise, and resources to successfully and effectively perform the agreed-upon services and will provide these services to the District in compliance with all applicable laws and regulations.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

- 1. Scope of Service.** Consultant shall perform the agreed-upon services as defined by the scope of work, deliverables, and standard of performance identified in Attachment A, and in accordance with the terms and conditions in this Agreement. The services listed in this Agreement and in Attachment A are referred to as "Services." Consultant's Services will be timely and performed or provided consistent with the profession skill and care of Consultant's profession and in compliance with all applicable laws and regulations.
- 2. Term.** This Agreement will begin and will be completed by the dates specified in Attachment A. Completion of the Services, including all deliverables as described in Attachment A, must be made to the satisfaction of the District.
- 3. Fees and Reimbursements.** Consultant will receive compensation an amount not to exceed _____ Dollars (\$_____) as shown in Attachment A for Services performed. District will pay Consultant all amounts owed within 30 days of receipt of Consultant's undisputed billing invoice. The District retains the right to increase or decrease the Services, deliverables, or amount of work as it deems appropriate and at its sole discretion.
- 4. Licenses and Permits.** Consultant and all of the Consultant's employees or agents will secure and maintain in force all licenses and permits as are required by law, in connection with the performance of the Services or the furnishing of materials, articles or deliverables listed in this Agreement. All operations and materials shall be in accordance with the law.
- 5. Taxes.** Consultant will fully complete the Internal Revenue Service W-9 form or other required reporting form. Consultant acknowledges and agrees that it is the Consultant's sole responsibility to make the requisite tax filings and payment to the appropriate federal, state or local tax authorities. The District will not withhold any part of the Consultant's compensation for the payment of social security, unemployment, or disability insurance or any

other similar state or federal tax obligation. Consultant agrees to indemnify, defend, and hold the District harmless from any tax consequences.

6. **Expenses and Equipment.** Consultant is solely and fully responsible for all costs and expenses incident to the performance of the Services by Consultant, including any and all instrumentalities, supplies, tools, equipment, or materials necessary to perform the Services. If the District furnishes any goods, materials, or equipment to Consultant, Consultant assumes complete liability for those goods, materials, or equipment. Consultant agrees to pay for such tools or materials spoiled by it or not otherwise accounted for to the District's satisfaction.
7. **Compliance with Applicable Laws.** The Services completed herein must meet the approval of the District and are subject to the District's general right of inspection to ensure they are satisfactorily completed. 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, the Services, Consultant's business, equipment, and personnel engaged in operations covered by this Agreement, or accruing out of the performance of such operations.
 - a. **PREVAILING WAGE and DIR REGISTRATION REQUIREMENT:**
If the Scope of Work herein includes work that is subject to Prevailing Wage Requirements as established by the California Department of Industrial Relations ("DIR"), then at all times while providing services under this Agreement, the consultant firm shall be registered with the Department of Industrial Relations pursuant to Labor Code §1725.5. Consultant firm is currently DIR registered with Registration Number of _____ and an expiration date of _____.
8. **Independent Consultant.** In the performance of this Agreement, Consultant shall act as an independent Consultant. Consultant shall perform the Services and obligations under this Agreement according to the Consultant's own means and methods of work which shall be in the exclusive charge and under the 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 understands and agrees that he/she/it and all of his/her/its employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant assumes the full responsibility for the acts or omissions of his/her/its employees or agents as they relate to the Services to be provided under this Agreement. Consultant is not authorized to make any representation, contract or commitment on behalf of the District.
9. **Termination.** District may terminate this Agreement for its convenience at any time by written notification to Consultant ten (10) days prior to the effective date of termination. District will pay Consultant all earned and undisputed amounts for Services provided through the date of termination.
10. **Ownership of Intellectual Property.** The Services performed hereunder are work made for hire and District shall exclusively own, in perpetuity and worldwide, all rights to and flowing from the work, including any work product, performed under this Agreement. Consultant assigns to District any and all rights Consultant could have, may have, or does have, in the work or the work product performed under this Agreement, and District shall have all

right, title, and interest in said matters, including the right to secure and maintain the copyright, trademark, or patent of said matters in the name of the District. Independent Contactor consents to the use of Consultant's name in conjunction with the sale, use, performance, and distribution of said matters, for any purpose and in any medium.

- 11. Limitation of Liability.** The District's financial obligations under this Agreement are limited to the payment of the compensation provided in this Agreement and Attachment A. Notwithstanding any other provision of this Agreement, in no event, shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.
- 12. Indemnity.** Consultant shall indemnify, defend, and hold the District, its Board of Trustees, officers, agents, employees, and volunteers harmless against any and all liability, claims, suits, demands, causes of action, damages, losses, injuries, and expenses, including reasonable attorneys' fees, whether actual or alleged, arising from all acts or omissions to act of Consultant or its officers, agents, employees, volunteers, and sub Consultants, including any claim that Consultant infringed a third party patent or copyright or other intellectual property right, unless the liability or claims arise from the District's sole and active negligence or willful misconduct. The provisions of this section shall survive the termination or expiration of this Agreement.
- 13. Insurance Requirements.** Consultant and its officers, employees, agents, and sub Consultants shall, at their expense, maintain and comply with Insurance Requirements listed below to protect Consultant and District from any and all claims for personal injury, bodily injury and property damage arising from, pertaining to or relating to the scope of work under this Agreement:
- A. Commercial General Liability. Minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal injury, bodily injury, death, other injury, and property damage.
 - B. Automobile Liability. \$1,000,000 per accident for bodily injury and property damage applicable to all owned, non-owned, and hired vehicles.
 - C. Professional Liability. Minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate.
 - D. Cyber Liability. Cyber Liability insurance with limits not less than \$1,000,000 per occurrence or claim/ \$5,000,000 in the aggregate: Required Yes ☐ No ☐
 - E. Workers' Compensation. Statutory limits required by the State of California.
 - F. Primary Insurance. Any insurance or self-insurance maintained by the District shall be excess of the Consultant's insurance and shall not contribute with it.
 - G. Waiver of Subrogation. Consultant agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, Consultant shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of Consultant may acquire against the District by virtue of payments of any loss under this insurance.
 - H. Additional Insured. Insurance shall name San Jose-Evergreen Community College District and its Board of Trustees, officers, employees, agents, and volunteers as Additional Insured under its Commercial General Liability and Automobile Liability policies. See Notice Section below for address and point of contact information.

- I. Certificate of Insurance. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII unless otherwise acceptable to the District. Consultant shall furnish the District with original certificates of insurance and amendatory endorsements effecting coverage required by this Agreement and indicating a thirty (30) day cancellation notice or notice of reduction in coverage before performing any Services under this Agreement. Consultant will be in material default of the Agreement if it fails to timely furnish these documents to the District.

14. Protection of Confidential Information. Consultant understands and acknowledges that during its performance of the Services, it or its employees may have access to private and confidential information in the District's possession, custody or control, including but not limited to private information regarding students, parents, guardians, faculty, donors, employees, staff, alumni, or other personnel data or information and other District related trade secrets, business plans, and other proprietary information ("Confidential Information"). This information may be protected by state and federal law. Consultant will not disclose, copy, or modify any Confidential Information without the prior written consent of the District or unless otherwise required by law. Consultant will promptly notify the District if it becomes aware of any possible unauthorized disclosure or use of the Confidential Information. The provisions of this section shall survive the termination or expiration of this Agreement.

15. Disabled Accessibility and Electronic and Information Technologies. Consultant hereby warrants that any goods or services, including any hardware or software products or services, to be provided under the Agreement comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Consultant agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services, which is brought to its attention. Consultant further agrees to indemnify, defend, and hold harmless the District, the Chancellor's Office of the California Community Colleges, and any California community college using the Consultant's products or services from any claim arising out of its failure to comply with these requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of the Agreement.

16. Non-Discrimination Endorsement. Consultant and District mutually agree that they will comply with all applicable Federal and California state anti-discrimination laws and regulations and agree not to unlawfully discriminate against any prospective or active employee engaged in the work, or against any other person, on the basis of race, color, age, ancestry, national origin, sex, religious creed, marital status, or physical or mental disability, medical condition, genetic information, sex, gender, gender identity or expression, or sexual orientation or any other category protected by law, including but not limited to, the California Fair Employment and Housing Act, beginning with Labor Code Section 1410, and Labor Code Section 1735. In addition, Consultant agrees to require like compliance by all hired sub Consultants.

17. Provisions Required By Law Deemed Inserted. Each provision of law and clause applicable to this Agreement, or required by law to be inserted in this Agreement, is deemed inserted herein and the Agreement shall be read and enforced as though the provisions are included herein.

- 18. Audit.** Consultant agrees that the District has the right to review, audit, and to copy any of Consultant's or Consultant's sub-consultants' records and supporting documentation pertaining to the performance of this Agreement. Consultant agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is required. Consultant agrees to allow the District access to these records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Consultant agrees to include a similar right of the District to audit records and interview staff in any subcontract related to performance of this Agreement.
- 19. Advertising.** Consultant shall not use the name of the District, its officers, directors, employees, or agents, in advertising, social marketing campaigns, publicity releases or otherwise without securing the prior written consent of the District in each instance.
- 20. Non-waiver.** The failure of the 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 the party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.
- 21. Notice.** All notices required or permitted to be given under this Agreement by either party to the other, shall be in writing and given, served, and received, if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or sent by overnight delivery services, or facsimile transmission, email, addressed as follows:

For the District:

Name:	
Title:	
Address:	
City, State, Zip:	
Phone:	
Email:	

For Consultant:

Name:	
Title:	
Address:	
City, State, Zip:	
Phone:	
Email:	

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

- 23. Approval by District's Board of Trustees.** Pursuant to Education Code Section 81655, this Agreement is not valid and does not constitute an enforceable obligation against the District unless and until District's Board of Trustees has approved or ratified this Agreement as evidenced by a motion duly passed and adopted by the Board of Trustees.
- 24. Conflict of Interest and Prohibited Interests.** No officer, employee, or any other agent of the District authorized in any capacity on behalf of the District to exercise any fiduciary, executive, or other similar functions, shall be allowed to possess or accept, directly or indirectly, or in any part thereof, any financial interest in any contract, bid or other procurement activity of the District. Additionally, no officer, employee, or any other agent of the District similarly authorized, shall be allowed to possess or accept any form of gift, payment, undue advantage or influence, directly or indirectly, or in any part thereof. The District reserves the right, before any Agreement or procurement award is made, to require an affidavit from the respective bidder or Consultant to disclaim in writing any conflict of interest. Furthermore, the District reserves the right to reject any bidder or Consultant if any such conflict is discovered, and subsequently award to the next preferred vendor.
- 25. Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or Consultant. Any legal proceedings brought to interpret or enforce the terms of this Agreement, shall be brought in Santa Clara County, California.
- 26. Disputes.** Except in the event of the District's failure to make earned and undisputed payments to Consultant, if the District and Consultant have a dispute, each will continue to perform its respective obligations, including Consultant's duty to provide and perform the Services, during all attempts to resolve the dispute.
- 27. Mediation; Arbitration.** Parties agree that if any dispute or controversy arises between them in any way arising out of, related to, or connected with this Agreement or its subject matter, they will participate in good faith in mediation and agree to equally share all mediator fees. If the Parties are unable to resolve the dispute or controversy through mediation, the Parties agree to submit the pending dispute or controversy to final and binding arbitration to be held in Santa Clara County, California, and to be governed by JAMS. By agreeing to this binding arbitration provision, the Parties understand that they are waiving certain rights and protections which may otherwise be available if a claim were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration provision, the right to a jury trial, certain rights of appeal, the right bring a claim as a class member in any purported class or representative proceeding; and a right to invoke formal rules of procedure and evidence. The prevailing party shall be awarded all reasonable attorneys' fees, expert witness fees, and other litigation expenses, expended or incurred in such arbitration or litigation. The provisions of this section will apply during the term of this Agreement and survives after the termination or expiration of this Agreement.
- 28. Successors; No Assignment.** This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Consultant and the District. Neither Consultant nor District may assign rights or obligations of this Agreement without the prior written consent of the other, which may be withheld or granted in sole discretion of the Party requested to grant consent.

29. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

30. Entire Agreement. This Agreement, Attachment A and its attachments, constitute the sole entire Agreement and understanding between the District and Consultant concerning their subject matter. It replaces and supersedes all prior agreements or negotiations, whether written or verbal. It may not be modified except in a writing signed by the District and Consultant.

31. Time of Performance. Time is of the essence and Consultant shall perform the Services required by this Agreement in an expeditious and timely manner so as not to unreasonably delay the purpose of this Agreement.

32. Payment Terms

Unless specified otherwise in this section, payment terms are Net 30 days, computed either from date of delivery and acceptance of contracted services or from the date of receipt of correct and proper invoices prepared in accordance with the terms of this Agreement whichever date is later. Invoices must be sent via email to the email address checked below:

accounts.payable@sjeccd.edu ☐
bond.invoices@sjeccd.edu ☐

33. RESERVED

IN WITNESS HEREOF, the District and Consultant have executed this Agreement as of the dates set forth below.

Consultant Name:	San Jose Evergreen Community College District
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

*APPROVED Re: Form & Legality
By:
Date:

MODIFICATIONS MADE TO THIS AGREEMENT.

ATTACHMENT A – SCOPE OF WORK

Contractor/Consultant [Legal Name]:	
Address, City, State, Zip:	
Primary Contact Name:	
Primary Contact Phone:	
Primary Contact Email:	

District/Department Primary Contact Name:	
Primary Contact Phone:	
Primary Contact Email:	

CONTRACT PERIOD:

Start Date:	End Date:
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RESPONSIBILITIES OF CONTRACTOR/CONSULTANT, CONTRACT OBJECTIVES AND DELIVERABLES:

RESPONSIBILITIES OF THE DISTRICT:

Rate of Payment:

\$_____ per: [Hour ☐ Day ☐ Month ☐ Annually ☐ Project ☐ Other, specify _____

District Use Only:

Initiator:	
GL Account Code:	
Requisition Number:	

ATTACHMENT B – COVID-19 WORKPLACE CERTIFICATION

In an effort to create and promote safer working environments for contractors, vendors, and trade partners and provide a safe and inviting learning environment for the San Jose Evergreen Community College District employees and students, (SJECCD) Board of Trustees has passed Resolution 083121-3 "COVID-19 Vaccine Requirement".

Full text from the Resolution found here: <http://go.boarddocs.com/ca/sjeccd/Board.nsf/goto?open&id=C6ANKK605236>

The undersigned understands and will comply with the Vaccine Requirement passed by the Board of Trustees on August 13, 2021, as Resolution 083121-3 and attests to the following:

CONTRACTOR/CONSULTANT is aware of the risks caused by COVID-19 and impacts caused to a project site and labor pool due to major COVID-19 outbreaks.

CONTRACTOR/CONSULTANT attest that all employees who are on the project site for more than 15 minutes will provide to the Contractor/Consultant proof of being fully vaccinated against COVID-19 per guidance from the FDA or a negative COVID-19 test completed within 72 hours of being on-site on any District Property.

The CONTRACTOR/CONSULTANT will be responsible for ensuring compliance with the COVID-19 vaccination requirement to verify vaccination status or negative test results received within 72 hours of being on-site. Means and methods of implementing this verification protocol for all employees, regardless of sub tier, working under the CONTRACTOR/CONSULTANT contracted scope of work will be the responsibility of the CONTRACTOR/CONSULTANT.

CONTRACTOR/CONSULTANT who are not fully vaccinated are required to be tested weekly for COVID-19 and provide test results upon request of the District.

CONTRACTOR/CONSULTANT will be responsible for ensuring compliance and costs associated with the COVID-19 vaccination and testing requirements of the District.

Upon request from the District's Associate Vice Chancellor of Physical Plant Development and Operations, the CONTRACTOR/CONSULTANT shall provide sufficient evidence of compliance with the program.

These requirements are supplemental to the requirements and directives from the State of California, the federal government, and the Santa Clara County Public Health Department.

CONTRACTOR/CONSULTANT understand that if the District determines that Contractor/Consultant has either: (a) made a false certification herein, or (b) violated this Certification by failing to carry out and to implement the requirements, the Contract awarded herein is subject to termination for cause, suspension of payments, or both.

Contractor/Consultant declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Signature:
Name:
Title:
Date: