



PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT No. 8079.19 is made and entered into on February 19, 2019 between **SOUTHWESTERN COMMUNITY COLLEGE DISTRICT**, hereinafter referred to as “DISTRICT”, and **Casamar Group, LLC**, hereinafter referred to as “CONSULTANT”. The DISTRICT and the CONSULTANT are sometimes referred to herein as a “PARTY” and collectively as the “PARTIES”. This AGREEMENT is made with reference to the following facts:

WHEREAS, DISTRICT requires specialized services and/or advice in connection with certain consulting, financial, economic, accounting, estimate and/or administrative matters where such services and advice are not available to the DISTRICT without cost either internally or from other public agencies;

WHEREAS, CONSULTANT has represented to the Governing Board that CONSULTANT is knowledgeable and qualified in skills required for this project and covenants that CONSULTANT is capable of performing the services required under this agreement; and

WHEREAS, if the nature of Consultant Services requires the CONSULTANT to be licensed, permitted or otherwise authorized by a governmental agency to complete the Consultant Services, CONSULTANT shall obtain and keep in full force and effect all such required license(s), permit(s) or other authorization(s).

WHEREAS, the Consultant Services are “special services” as that term is used and defined in Government Code §53060.

WHEREAS, DISTRICT desires to obtain specialized services and/or advice for Project Labor Agreement (PLA) Coordinator Consulting Services, hereinafter referred to as the “PROJECT”, located within the DISTRICT; and

WHEREAS, CONSULTANT has indicated its willingness and commitment to provide its specialized services and/or advice to the DISTRICT on the terms hereafter set forth in this AGREEMENT.

NOW, THEREFORE, the PARTIES hereto agree as follows:

ARTICLE I
SCOPE OF SERVICES AND RESPONSIBILITIES

1. Services. The CONSULTANT shall provide to the DISTRICT on the terms set forth herein and all the services articulated in the CONSULTANT’s scope of work which is attached hereto and incorporated herein as **EXHIBIT “A”** (“Services”). The PARTIES agree if there is a proposal or similar document attached or incorporated into **EXHIBIT “A”**, that the terms of this AGREEMENT shall be controlling over any of the terms contained within the CONSULTANT’s proposal or similar document.

2. AGREEMENT Term. The term of this AGREEMENT shall begin March 12, 2019 and shall end March 11, 2022, in accordance with the schedule as stated in **EXHIBIT “A”**. This AGREEMENT may be extended upon written consent by both PARTIES. The District reserves the option to extend the terms of the contract for additional periods consisting of 12 months each. This AGREEMENT shall not exceed a five (5) years term total.

a. The CONSULTANT shall notify the District if apparent difficulties with regard to performance, according to the terms of the service authorization are anticipated or any difficulties in meeting milestones arise. The CONSULTANT shall notify the District whenever it has reason to believe that the costs the CONSULTANT expects to incur under the SAO will exceed the fee included in the SAO and will not proceed without direction from the District.

3. CONSULTANT makes the following certifications, representations, and warranties for the benefit of the DISTRICT and CONSULTANT acknowledges and agrees that the DISTRICT, in deciding to engage CONSULTANT pursuant to this AGREEMENT, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONSULTANT’s engagement hereunder:

a. CONSULTANT is qualified in all respects to provide to the DISTRICT all of the Services contemplated by this AGREEMENT and, to the extent required by any applicable laws, CONSULTANT has all such licenses and/or governmental approvals as would be required to carry out and perform, for the benefit of the DISTRICT, such Services as are called for hereunder.

b. CONSULTANT, in providing the Services and in otherwise carrying out its obligations to the DISTRICT under this AGREEMENT, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers’ compensation and equal protection and non-discrimination laws. CONSULTANT shall be liable for all violations of such laws and regulations in connection with Services.

4. The CONSULTANT will perform its Services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing in California. The CONSULTANT will furnish, at its expense, those Services that are set forth in this AGREEMENT and **EXHIBIT “A”** and represents that the Services set forth in said EXHIBIT are within the technical and professional areas of expertise of the CONSULTANT or any sub-CONSULTANT the CONSULTANT has engaged or will engage to perform the Service(s). The DISTRICT shall request in writing if the DISTRICT desires the CONSULTANT to provide Services in addition to, or different from, the Services described in **EXHIBIT “A”**. The CONSULTANT shall advise the DISTRICT in writing of any Services that, in the CONSULTANT’s opinion, lie outside of the technical and professional expertise of the CONSULTANT.

5. The CONSULTANT shall provide any required Department of State Architect (DSA) reports, certifications or forms for each of the DSA application numbers included under this PROJECT within ten (10) days of that specific DSA application number PROJECT completion. Depending on the nature of Consultant Services contemplated in this agreement, the District may at its discretion waive this provision 5 in its entirety.

6. CONSULTANT warrants that all of CONSULTANT's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. CONSULTANT further represents that it, its employees and subcontractors or sub-CONSULTANTS have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this AGREEMENT. Any of CONSULTANT's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the PROJECT, a threat to the safety of persons or property, or any of CONSULTANT's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the PROJECT by the CONSULTANT and shall not be re-employed to perform any of the Services or to work on the PROJECT.

7. The CONSULTANT is not authorized to modify, waive, eliminate, or add any requirement to the PROJECT's specifications or other contract documents, nor to approve or accept any portion of the PROJECT work, unless specifically authorized in writing by the DISTRICT or its authorized representative. The CONSULTANT shall not have the right to reject work or the right to stop work, except for such periods as may be required to conduct sampling, testing or inspection of work covered by this AGREEMENT.

ARTICLE II

PAYMENTS TO CONSULTANT

1. Basic Services: CONSULTANT agrees to perform basic Services provided by this AGREEMENT, and DISTRICT agrees to pay CONSULTANT for such Services, a not to exceed amount of FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$500,000.00) in accordance with **EXHIBIT "A"**. Compensation for Additional Services shall be dependent upon CONSULTANT's compliance with the provisions outlined in ARTICLE IV below and shall be calculated in accordance with the rates set forth in **EXHIBIT "A"**.

2. Reimbursable Costs/Expenses: The DISTRICT recognizes that certain costs and expenses associated with the Services performed are reimbursable to the CONSULTANT. Provided that the CONSULTANT obtains the DISTRICT's prior written approval, costs and expenses will be reimbursed to the CONSULTANT in accordance with this ARTICLE. The DISTRICT's prior written authorization is an express condition precedent to any reimbursement to the CONSULTANT of such costs and expenses, and no claim for any additional compensation or reimbursement shall be valid absent such prior written approval by the DISTRICT and calculated in accordance with the rates set forth in **EXHIBIT "A"**. The CONSULTANT's mileage and travel time shall not be considered as an allowable reimbursable expense. The descriptive categories of expenses that may be considered for reimbursement are as follows, and any other reimbursable expenses must be approved in writing by the DISTRICT:

a. Approved reproduction of reports and/or other documents in excess of the copies required by this AGREEMENT;

b. Authorized Fees advanced for securing approval of authorities in connection with the Services rendered pursuant to this AGREEMENT; and

c. Cost of sub-CONSULTANTS hired by CONSULTANT with prior written approval of DISTRICT.

3. The CONSULTANT shall submit invoices on a monthly basis to the DISTRICT for the fees incurred during the billing period and reimbursable expenses (if any). Separate invoices shall be submitted for each PROJECT if applicable. Invoice shall be processed within thirty (30) days upon receipt and upon approval by Southwestern Community College District, of an invoice, showing services rendered for the period covered by this AGREEMENT.

4. All invoices must be signed by CONSULTANT's Chief Financial Officer or designee.

5. CONSULTANT certifies that CONSULTANT has not and will not receive pay for the same services or days of Service by any other public agency.

6. DISTRICT shall not be liable to CONSULTANT for any costs or expenses paid or incurred by CONSULTANT in performing services for DISTRICT, unless otherwise specifically stated in the AGREEMENT.

The DISTRICT may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment to such extent as may be necessary to protect the DISTRICT from loss, including costs and attorneys' fees, on account of: (1) defective or deficient work product not remedied; (2) failure of the CONSULTANT to make payments properly to its employees or sub-CONSULTANTS; or (3) failure of CONSULTANT to perform its services in a timely manner so as to conform to PROJECT schedule.

ARTICLE III **TERMINATION**

1. This AGREEMENT may be terminated by either PARTY upon fourteen (14) days written notice to the other PARTY in the event of an uncured substantial failure of performance by such other PARTY, including insolvency of CONSULTANT; or if the DISTRICT should decide to abandon or indefinitely postpone the PROJECT.

2. In the event of a termination based upon abandonment or postponement by DISTRICT, the DISTRICT shall pay to the CONSULTANT for all Services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the CONSULTANT for Board approved Additional Services. In ascertaining the Services actually rendered hereunder up to the date of termination of this AGREEMENT,

consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings (if applicable), reports and/or other documents whether delivered to the DISTRICT or in the possession of the CONSULTANT. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased CONSULTANT and replacement CONSULTANT costs, shall be deducted from payments to the CONSULTANT.

3. In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Paragraph 4 below, and CONSULTANT shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by CONSULTANT.

4. This AGREEMENT may be terminated without cause by DISTRICT upon twenty (20) days written notice to the CONSULTANT. In the event of a termination without cause, the DISTRICT shall pay CONSULTANT for all Services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the CONSULTANT for Board approved Additional Services.

5. In the event of a dispute between the PARTIES as to performance of the work or the interpretation of this AGREEMENT, or payment or nonpayment for work performed or not performed, the PARTIES shall attempt to resolve the dispute. Pending resolution of this dispute, CONSULTANT agrees to continue the work diligently to completion. If the dispute is not resolved, CONSULTANT agrees it will neither rescind the AGREEMENT nor stop the progress of the work, but CONSULTANT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT has been completed, and not before. The PARTIES may agree in writing to submit any dispute between the PARTIES to mediation and/or arbitration.

ARTICLE IV **ADDITIONAL SERVICES**

1. CONSULTANT shall notify the DISTRICT in writing of the need for Additional Services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the DISTRICT before rendering any Additional Services. The DISTRICT may also require CONSULTANT to perform additional services which are, in the DISTRICT's discretion, necessary. Compensation for all Additional Services shall be negotiated and approved in writing by the DISTRICT before CONSULTANT performs such Additional Services. CONSULTANT shall not be entitled to any compensation for performing Additional Services that are not previously approved by the DISTRICT in writing. Additional Services may include:

a. Making material revisions in reports or other documents when such revisions are required by the enactment or revision of laws, rules or regulations subsequent to the preparation and completion of such documents;

b. Preparing reports and other documentation and supporting data, and providing other Services in connection with PROJECT modifications required by causes beyond the control of the CONSULTANT which are not the result of the direct or indirect negligence, errors or omissions on the part of CONSULTANT;

c. If the DISTRICT requests additional shifts to complete the Services articulated in **EXHIBIT “A”** where the requests for additional shifts do not arise from the direct or indirect negligence, errors or omissions on the part of CONSULTANT, the CONSULTANT’s compensation is expressly conditioned on the lack of fault of the CONSULTANT; and

d. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with the generally accepted practice in the CONSULTANT’s industry.

ARTICLE V
SUCCESSORS AND ASSIGNS

1. It is mutually understood and agreed that this AGREEMENT shall be binding upon the DISTRICT and its successors and upon the CONSULTANT, its partners, successors, executors, and administrators. Neither this AGREEMENT, nor any monies due or to become due thereunder, may be assigned by the CONSULTANT without the written consent and approval of the DISTRICT.

ARTICLE VI
AUDIT AND INSPECTION OF RECORDS OF THE CONSULTANT

1. At any time during the normal business hours and as often as DISTRICT may deem necessary, CONSULTANT shall make available to DISTRICT for examination at DISTRICT’s place of business as specified herein, all data, records, investigation reports and all other materials respecting matters covered by this CONSULTANT and CONSULTANT will permit the 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. CONSULTANT shall allow inspection of all work, data, documents, proceedings, and records related to the AGREEMENT for a period of four (4) years from the date of final payment under this AGREEMENT.

ARTICLE VII
REPORTS AND/OR OTHER DOCUMENTS

1. The reports and/or other documents that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT’s CONSULTANTs in accordance with this AGREEMENT, shall be and remain the property of the DISTRICT (hereinafter “PROPERTY”). The DISTRICT may provide the CONSULTANT with a written request for the return of its PROPERTY at any time. Upon CONSULTANT’s receipt of the DISTRICT’s written request, CONSULTANT shall return the requested PROPERTY to the DISTRICT within seven (7) calendar days. Failure to comply with the requirements in this Article shall be deemed a material breach of this AGREEMENT.

ARTICLE VIII
INDEMNITY AND INSURANCE

1. Indemnification. To the fullest extent permitted by law, CONSULTANT shall defend (with counsel of District's choosing), indemnify and hold the DISTRICT, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of CONSULTANT, its officials, officers, employees, subcontractors, CONSULTANTs or agents in connection with the performance of the CONSULTANT's Services, the PROJECT or this AGREEMENT, including without limitation the payment of all consequential damages, expert witness fees and attorney's fees and other related costs and expenses, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, or agents. CONSULTANT shall reimburse DISTRICT and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. CONSULTANT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the DISTRICT, its directors, officials officers, employees, agents, or volunteers. Notwithstanding the foregoing, to the extent CONSULTANT's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT agrees to waive all rights of subrogation against the DISTRICT.

a. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE VIII, PARAGRAPH 1 OF THIS AGREEMENT SHALL BE THE SOLE INDEMNITY, AS DEFINED BY CALIFORNIA CIVIL CODE § 2772, GOVERNING THIS AGREEMENT. ANY OTHER INDEMNITY THAT MAY BE ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

b. ANY ATTEMPT TO LIMIT THE CONSULTANT'S LIABILITY TO THE DISTRICT IN AN ATTACHED EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE DISTRICT AND THE CONSULTANT.

2. District Indemnity of CONSULTANT. The DISTRICT shall indemnify and hold harmless Consultant from claims arising out of bodily injury (including death) and physical damage which arise out of the negligent or willful acts, omissions or other conduct of the DISTRICT.

3. Insurance. CONSULTANT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT which will protect CONSULTANT and DISTRICT from claims which may arise out of or result from CONSULTANT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. The CONSULTANT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California. However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).

b. Commercial general liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) and automobile liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) for bodily injury and property damage liability, per occurrence, including coverage for the following:

- i. Owned, non-owned and hired vehicles;
- ii. Blanket contractual;
- iii. Broad form property damage;
- iv. Products/completed operations; and
- v. Personal injury.

c. Professional liability insurance (errors and omissions), including contractual liability, with limits of ONE MILLION DOLLARS (\$1,000,000), per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination. Depending on the nature of Consultant Services contemplated in this AGREEMENT, the DISTRICT may at its discretion waive this section for Professional liability insurance requirement in its entirety.

d. Valuable Document Insurance. The CONSULTANT shall carry adequate insurance on all reports, drawings, specifications, record drawings and/or other documents as may be required to protect the DISTRICT in the amount of its full equity in those reports, drawings, specifications, record drawings and/or other documents, and shall file with the DISTRICT a certificate of that insurance. The cost of that insurance shall be paid by the CONSULTANT, and the DISTRICT shall be named as an additional insured. Depending on the nature of Consultant Services contemplated in this AGREEMENT, the DISTRICT may at its discretion waive and or modify this section for Valuable Document Insurance requirement.

e. Each policy of insurance required in Paragraph b above shall name DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary

insurance; shall state that written notice shall be given to DISTRICT prior to cancellation; and, shall waive all rights of subrogation. CONSULTANT shall notify DISTRICT in the event of material change in, or failure to renew, each policy. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event CONSULTANT shall reimburse DISTRICT upon demand for the cost thereof.

f. Policy Endorsements; Evidence of Insurance. Prior to commencing work, CONSULTANT shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the coverage amounts required herein. All policies of insurance required herein shall be issued by insurer(s) authorized to issue insurance policies by the State of California and who are A.M. Best rated at least A-/VII. Coverages under each policy of insurance required herein, whether by endorsement or otherwise, shall provide that such policy will not be modified, canceled or allowed to expire without at least thirty (30) days advance written notice to the District.

g. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such sub-CONSULTANT to purchase and maintain insurance coverage for the types of insurance referenced in ARTICLE VIII, Paragraphs 2a, b, c, and d above in amounts which are appropriate with respect to that sub-CONSULTANT's part of work which shall in no event be less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per occurrence.

ARTICLE IX **MISCELLANEOUS**

1. Control and Payment of CONSULTANT and its Subordinates. CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's 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 and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the Services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of any applicable prevailing wages and all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONSULTANT's employees.

2. Prevailing Wages. If applicable and required under California Labor Code section 1720 *et seq.*, AGREEMENT or shall pay, and shall cause all sub-consultants and/or subcontractors of every tier to pay, not less than the specified prevailing wage rates, to the extent applicable, to all workers employed to perform work or Services under this AGREEMENT. CONSULTANT shall defend, indemnify and hold DISTRICT, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the

CONSULTANT and all sub-consultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor, and debarment of contractors and subcontractors.

3. Registration. If the services are being performed as part of an applicable “public works” or “maintenance” project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the CONSULTANT and all sub-consultants must be registered with the Department of Industrial Relations (“DIR”). CONSULTANT shall maintain registration for the duration of the project and require the same of any sub-consultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be CONSULTANT’S sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

4. Installation Requirements. All installation, integration, and other potentially public works construction activities which may be contemplated by CONSULTANT, shall be performed in accordance with all applicable, laws, rules, and regulations of the DISTRICT.

5. Taxes. CONSULTANT acknowledges and agrees that it is the sole responsibility of CONSULTANT to report as income its compensation received from District and to make the requisite tax filings and payments to the appropriate federal, state or local tax authority. No part of CONSULTANT’s compensation shall be subject to withholding by District for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.

6. Ownership of Materials and Confidentiality.

a. CONSULTANT shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this AGREEMENT unless otherwise specifically stated in the AGREEMENT. CONSULTANT’s services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.

b. All materials and data, including but not limited to, data on magnetic media and any materials and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by CONSULTANT pursuant to this AGREEMENT, shall be the sole property of the DISTRICT, except that CONSULTANT shall have the right to retain copies of all such documents and data for its records. DISTRICT shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this AGREEMENT shall be at DISTRICT’s sole risk and provided that CONSULTANT shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this AGREEMENT.

c. All such materials and data shall be provided to the DISTRICT, or such other agency or entity as directed by DISTRICT or required by law, rule or regulation, immediately upon completion of the term of this AGREEMENT as directed by DISTRICT. Should DISTRICT wish to obtain possession of any such materials or data during the term

of this AGREEMENT, it shall make its request in writing. Such information shall be provided to the DISTRICT within forty-eight (48) hours of its request.

7. No Third Party Beneficiaries. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or CONSULTANT.

8. Conflicting Provisions. THIS AGREEMENT SHALL NOT INCLUDE OR INCORPORATE THE TERMS OF ANY PROPOSAL, GENERAL CONDITIONS, CONDITIONS, MASTER AGREEMENT OR ANY OTHER BOILERPLATE TERMS OR FORM DOCUMENTS PREPARED BY THE CONSULTANT. THE ATTACHMENT OF ANY SUCH DOCUMENT TO THIS AGREEMENT AS **EXHIBIT "A"** SHALL NOT BE INTERPRETED OR CONSTRUED TO INCORPORATE SUCH TERMS INTO THIS AGREEMENT UNLESS THE DISTRICT APPROVES OF SUCH INCORPORATION IN A SEPARATE WRITING SIGNED BY THE DISTRICT. ANY REFERENCE TO SUCH BOILERPLATE TERMS AND CONDITIONS IN THE PROPOSAL OR QUOTE SUBMITTED BY THE CONSULTANT SHALL BE NULL AND VOID AND HAVE NO EFFECT UPON THIS AGREEMENT. PROPOSALS, QUOTES, STATEMENT OF QUALIFICATIONS AND OTHER SIMILAR DOCUMENTS PREPARED BY THE CONSULTANT MAY BE INCORPORATED INTO THIS AGREEMENT AS **EXHIBIT "A"** BUT SUCH INCORPORATION SHALL BE STRICTLY LIMITED TO THOSE PARTS DESCRIBING THE CONSULTANT'S SCOPE OF WORK, RATE AND PRICE SCHEDULE AND QUALIFICATIONS.

9. Consultation with Legal Counsel. Each of the PARTIES have had the opportunity to, and have to the extent each deemed appropriate, obtained legal counsel concerning the content and meaning of this AGREEMENT. Each of the PARTIES agrees and represents that no promise, inducement or agreement not herein expressed has been made to effectuate this AGREEMENT. This AGREEMENT represents the entire AGREEMENT between the DISTRICT and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the DISTRICT and the CONSULTANT.

10. Time is of the Essence. Time is of the essence with respect to all provisions of this AGREEMENT.

11. Attorneys' Fees. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney's fees.

12. Exhibits and Recitals. All exhibits and recitals referenced herein and attached hereto shall be deemed incorporated into and made a part of this AGREEMENT by each reference as though fully set forth in each instance in the text hereof with the exception of those documents or provisions that are subject to the exclusions specifically set forth in this AGREEMENT.

13. Interpretation. This AGREEMENT shall be liberally construed to effectuate the intention of the PARTIES with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to any word, phrase or provision of this AGREEMENT, neither this AGREEMENT nor any uncertainty or ambiguity herein will be construed or resolved against either party (including the PARTY primarily responsible for drafting and preparation of this AGREEMENT), under any rule of construction or otherwise, it being expressly understood and agreed that the PARTIES have participated equally or have had equal opportunity to participate in the drafting hereof.

14. Non-Waiver. None of the provisions of this AGREEMENT shall be considered waived by either party, unless such waiver is expressly specified in writing.

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.

15. Counterparts. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, all of which shall be sufficient evidence of this AGREEMENT.

16. 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.

CONSULTANT shall advise the 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 the DISTRICT and as a result of the use of any programs or materials developed by CONSULTANT under this AGREEMENT the DISTRICT should be found in violation of any copyright restrictions or requirements, or the DISTRICT should be alleged to be in violation of any copyright restrictions or requirements, CONSULTANT agrees to indemnify, defend and hold harmless, DISTRICT against any action or claim brought by the copyright holder.

b. Notwithstanding the above requirements, to the extent any records or documents associated with the CONSULTANT's services and/or the project are or become public records, they shall be subject to disclosure pursuant to the Public Records Act and applicable California law.

17. Governing Law: This AGREEMENT shall be governed by the laws of the State of California.

18. Severability: If any portion of this AGREEMENT is held as a matter of law to be unenforceable, the remainder of this AGREEMENT shall be enforceable without such provisions.

19. Notices: 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, overnight, or certified mail, return receipt requested, with postage prepaid. 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 Paragraph. At the date of this AGREEMENT, the addresses of the PARTIES are as follows:

To the DISTRICT:

To the CONSULTANT:

Southwestern Community College District Attn: Linda Hernandez, Director of Procurement, Central Services & Risk Management 900 Otay Lakes Road Chula Vista, CA 91910 Telephone: (619) 482-6557 Email: rhernandez@swccd.edu	Casamar Group, LLC Attn: Joe Garcia, PE, QSP Title: Principal 23335 Alamos Ln Newhall, CA 91932 Telephone: 626-255-2957 Email: jgarcia@casamargroup.com
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20. Conflict of Interest. For the term of this AGREEMENT, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this AGREEMENT, or obtain any present or anticipated material benefit arising therefrom.

If the District determines that CONSULTANT is a “CONSULTANT” under Political Reform Act of 1974, CONSULTANT shall comply with all applicable Conflict of Interest laws, including the filing of a Statement of Economic Interest, pursuant to the District’s Conflict Code, under a disclosure category or categories as determined by the District’s Superintendent/President.

21. Equal Opportunity Employment/Non-Discrimination. CONSULTANT shall not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment; or discriminate in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual’s race, color, religion, sex, national origin, age, disability, medical condition, or marital status.

In the event the District is made aware of a complaint of an employee, student, or guest in relation to a violation of Title IX of the Education Amendments of 1972 or state laws regarding harassment, discrimination, or retaliation, and involving any Contractor employee (whether as a subject, victim or witness), the District has an obligation to conduct an investigation. Contractor agrees to cooperate in any such investigation, by making Contractor employees available for

interviews, without additional compensation for time. Contractor further agrees to provide any related information or documentation that the District believes may assist in such investigation.

CONSULTANT shall ensure that services and benefits are provided without regard to race, color, religion, sex, age, or national origin. CONSULTANT shall comply with the Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended.

CONSULTANT shall also comply with all relevant provisions of District's Minority Business Enterprise program, if any, or other related programs or guidelines currently in effect or hereinafter enacted. CONSULTANT must make a good faith effort to contact and utilize DVBE subcontractors or sub-CONSULTANTS and suppliers in securing bids for performance of the AGREEMENT and shall be required to certify its good faith efforts towards retaining Disabled Veterans Business Enterprise (DVBE) subcontractors or sub-CONSULTANTS and suppliers and identify DVBE firms utilized in performance of the AGREEMENT.

22. Originality. CONSULTANT agrees that all material produced by the CONSULTANT and delivered to Southwestern Community College District hereunder shall be original, except for such portion as is included with permission of the copyright owners thereof, that it shall contain no libelous or unlawful statements or materials, and will not infringe upon any copyright, trademark, patent, statutory or other proprietary rights of others and that it will hold harmless the Governing Board from any costs, expenses and damages resulting from any breach of this representation.

23. Works for Hire. CONSULTANT understands and agrees that all matters produced under this AGREEMENT shall be works for hire and shall become the sole property of District and cannot be used without District's express written permission. 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 name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

24. Tobacco Prohibited: any tobacco use (smoking, chewing, etc.) by anyone, is prohibited at all times on any DISTRICT property.

25. Images. If applicable, the CONSULTANT is prohibited from capturing on any visual medium images of any property, logo, student, or employee of the DISTRICT, or any image that represents the DISTRICT without express written consent from the DISTRICT.

26. Board Approval. In accordance with California Education Code section 81655, this AGREEMENT is not a valid or enforceable obligation against the DISTRICT until approved or ratified by motion of the Governing Board of the DISTRICT duly passed and adopted.

27. Rights in Data. CONSULTANT grants to the Governing Board the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of work under this AGREEMENT.

28. Compliance and Cooperation with Applicable Laws. The service completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. CONSULTANT agrees to comply with the District's Board Policies and Administrative Procedures as well as 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 operations covered by this AGREEMENT or accruing out of the performance of such operations.

29. 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 X
ENTIRE AGREEMENT

1. All of the AGREEMENT between the PARTIES is included herein, and no warranties expressed or implied, representations, promises, or statements have been made by either PARTY unless endorsed hereon in writing, and no charges or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as the AGREEMENT.

2. Neither amendments to nor modifications of this AGREEMENT shall be effective unless signed by officials of the CONSULTANT and the DISTRICT having authority equal to or greater than that of the officials signing this AGREEMENT. The DISTRICT and the CONSULTANT hereby agree to the full performance of the covenants contained herein.

****Remainder of Page Left Intentionally Blank****

The PARTIES, through their authorized representatives, have executed this AGREEMENT as of the day and year first written above.

“CONSULTANT”
Casamar Group, LLC
Joe Garcia, PE, QSP
Principal

“DISTRICT”
Southwestern Community College District
Rosalinda Hernandez
Director of Procurement, Central Services
& Risk Management

23335 Alamos Ln
Newhall, CA 91932

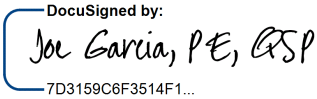
900 Otay Lakes Road
Chula Vista, CA 91910-7299

Telephone: 626-255-2957

Telephone: 619 482-6301

Fax: 619 482-6413

Email: jgarcia@casamargroup.com

Signature: 
7D3159C6F3514F1...

Signature: 
C3F0E891EF984FF...

Date: 2/21/2019

Date: 2/21/2019

Are you a District employee? No

Is a Credential or Special License required for this contractor? No

If yes, please specify and attach a copy of current License. N/A

Originator: Mark Claussen, Consultant, Business and Financial Affairs, Propositions R and Z

Account No.: 42-821001-710000-55110-10

EXHIBIT “A”
(Compensation-Fee Schedule-Scope of Services)

1. Compensation for Basic Services:

The DISTRICT shall compensate the CONSULTANT for the performance of all Services required under this AGREEMENT an amount not to exceed FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (**\$500,000.00**). Payments will be based on monthly invoices, which will set forth the hours and dates actually worked and expenses incurred during the billing period. The billing rates indicated herein will be multiplied by the actual hours for each position to arrive at the total fee for each month. The CONSULTANT will not exceed the not to exceed fee without prior written authorization of the DISTRICT.

2. Fee Schedule:

Position/Title	2019/2020	2020/2021	2021/2022
PLA Administrator	\$160.73	\$174.95	\$180.23
Sr. Labor/PLA Compliance Officer Analyst	\$131.29	\$150.78	\$155.30
Administration/Data/Document Analyst	\$71.61	\$75.44	\$77.70

3. Scope of Services:

The District projects that are subject to the CBA are all bond funded (Propositions R & Z) projects that have an engineer’s estimate in excess of \$1,000,000. The current Facilities Master Plan (FMP) lists the major projects. Project Labor Agreement (PLA) Coordinator will monitor and enforce compliance of the Parties with the Community Benefits Agreement (CBA), incorporated by reference. This effort will include, but is not limited to:

1. Assist with Contractor’s and the Council and Unions’ outreach efforts to ensure a local work force is available for the Work.
2. Assist with, and report on, Small Business Enterprise outreach and utilization.
3. Assist in identifying any condition whereby the provisions of the CBA would in any way impede the participation of qualified local craft workers and/or Small Business Enterprises.
4. Collect and validate the required Letter of Assent from all general contractors, specialty trade contractors, and all sub-tier contractors prior to work being performed.
5. Coordinate, plan and memorialize the pre-job conference and other meetings stated in the CBA.
6. Monitor proof of eligibility of contractors’ core employees.

7. If timely requested by a contractor, determine if the contractor's fringe benefits comply with the CBA and the appropriate Schedule A's.
8. Monitor any and all disputes regarding items of the CBA, and report on the same, ensuring timely resolution; and communication with the District should any pending work stoppage or lockout jeopardize the work.
9. Monitor work force usage reports (either developed by the Contractor or by Project Labor Coordinator) and report on local utilization during the course of the Work.
10. Organize and chair the Joint Committee defined in Article 19 of the CBA.