

SOUTHWESTERN COMMUNITY COLLEGE DISTRICT Independent Contractor Agreement

WHEREAS, it is the desire of the Governing Board of the Southwestern Community College District (hereinafter referred to as "District" or "Client") to contract with **Christy White Associates** as an Independent Contractor (hereinafter referred to as "Contractor" or "Engineer"); and whereas such service will assist the Governing Board in discharging its legal obligation to provide an adequate educational program; and whereas Government Code section 53060 authorizes the Governing Board to enter into contracts to obtain special services and advice in financial, economic, accounting, engineering, legal or administrative matters for the District; and

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

WHEREAS, the Governing Board recognizes that Contractor is acting as an independent contractor in the performance of work under this contract, and that Contractor, to the extent required by law, shall be solely responsible for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of work under this contract; and

WHEREAS, Contractor understands that, for purposes of this Agreement, Contractor is not an employee of the District and does not qualify for employee benefits, including workers' compensation benefits;

NOW THEREFORE, the following is agreed:

I. SERVICES AND WORK PRODUCT(S) TO BE RENDERED BY THE INDEPENDENT CONTRACTOR.

Contractor agrees to undertake, carry out and complete for the Governing Board, in a satisfactory and competent manner, the following services:

See Attachment A – Scope of Engagement

II. COMPENSATION, MAXIMUM COST, AND PAYMENT.

- (a) In consideration of the service to be rendered by Contractor as outlined in this agreement, the Governing Board agrees to pay Contractor a total amount not to exceed \$75,000 for services and product delivery and subsequent receipt of invoice for services rendered and products delivered by Contractor.
- (b) Invoice shall be processed within thirty (30) days upon receipt and approval by Southwestern Community College District of an invoice, in triplicate, showing services rendered for the period covered by the invoice.

- (c) All invoices submitted must contain the following certification statement: "I certify that payment requested is for appropriate purposes and in accordance with the provisions of the Contract." All invoices must be signed by Contractor's Chief Financial Officer or designee.
- (d) Contractor certifies that Contractor has not and will not receive pay for the same services or days of service by any other public agency.
- (e) District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District, unless otherwise specifically stated in this Contract.

III. PERIOD OF PERFORMANCE.

This period covered by this agreement shall begin on July 1, 2015 and shall terminate on June 30, 2016.

IV. CONFLICT OF INTEREST.

If the District determines that Contractor is a "Consultant" under Political Reform Act of 1974, Contractor 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.

V. INDEPENDENT CONTRACTOR.

Contractor, in the performance of this Contract, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her 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 Worker's Compensation. Contractor assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the service to be provided under this Contract.

Contractor shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all of Contractor's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Contractor 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 Contractor'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 Contractor'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

Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

VI. TAXES.

Contractor acknowledges and agrees that it is the sole responsibility of Contractor 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 Contractor'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.

VII. MATERIALS.

Contractor 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 Contract unless otherwise specifically stated in the Contract. Contractor'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.

VIII. AUDIT AND INSPECTION OF RECORDS.

At any time during the normal business hours and as often as District may deem necessary, Contractor 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 Contract and Contractor 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 Contract.

IX. CONFIDENTIALITY AND USE OF INFORMATION.

- (a) Contractor shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the District's research, development, trade secrets and business affairs; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.
- (b) Contractor 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 Contractor shall fail to so advise the District and as a result of the use of any programs or materials developed by Contractor under this Contract 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, Contractor agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.
- (c) Notwithstanding the above requirements, to the extent any records or documents associated with the Contractor'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.

X. EQUAL OPPORTUNITY/NON-DISCRIMINATION.

Contractor 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.

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

XI. HOLD HARMLESS AND INDEMNIFICATION.

To the fullest extent permitted by law, Contractor 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 Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Contractor 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. Contractor'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 Contractor'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 Contractor. Contractor agrees to waive all rights of subrogation against the District.

XII. TERMINATION.

- a. Grounds for Termination. District may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to District, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

- b. Effect of Termination. If this Agreement is terminated as provided in this Section, District may require Contractor to provide all finished or unfinished documents, data, programming source code, reports or any other items prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such documents and other information within fifteen (15) days of the request.
- c. Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

XIII. INSURANCE

Contractor agrees to carry and maintain, during the course or duration of this Agreement, comprehensive or commercial general liability insurance with limits of one-million dollars (\$1,000,000) per occurrence and \$2,000,000 aggregate combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect Contractor and District against liability or claims of liability which may arise out of this Contract. Contractor also agrees to carry Automobile Liability Insurance to include owned, non-owned or hired with limits of one-million dollars (\$1,000,000) per occurrence. Contractor will also carry Professional Liability Insurance (Errors and Omissions) with limits of one-million dollars (\$1,000,000) per occurrence. In addition, Contractor agrees to provide an endorsement to this policy stating, "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." Prior to commencing the performance of services hereunder, Contractor shall provide District with certificates of insurance evidencing all coverage and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage. Contractor agrees to name District and its officers, agents, volunteers and employees as additional insured under said policy under separate endorsement.

XIV. WORKER'S COMPENSATION INSURANCE.

Contractor agrees to procure and maintain in full force and effect Worker's Compensation Insurance covering its employees and agents while these persons are participating in the activities hereunder. In the event a claim under the provisions of the California Workers' Compensation Act is filed against District by a bona fide employee of Contractor participating under this Contract, Contractor agrees to defend and hold harmless the District from such claim.

XV. ORIGINALITY.

Contractor agrees that all material produced by the Contractor 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.

XVI. WORKS FOR HIRE.

Contractor understands and agrees that all matters produced under this Contract 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.

Contractor consents to use of Contractor name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

XVII. RIGHTS IN DATA.

Contractor 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 Contract.

XVIII. COMPLIANCE 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. Contractor 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 Contractor, Contractor's business, equipment and personnel engaged in operations covered by this Contract or accruing out of the performance of such operations.

XIX. PERMITS/LICENSES.

Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Contract.

XX. NON-WAIVER.

The failure of District or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Contract 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.

XXI. SEVERABILITY.

If any term, condition or provision of this Contract 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.

XXII. ASSIGNMENT.

This Contract is not assignable by Contractor either in whole or in part, nor shall the Contractor further contract for the performance of any of its obligations hereunder, without the prior written consent of the Governing Board.

XXIII. LAWS GOVERNING.

This Contract shall be governed by and construed in accordance with the laws of the State of California.

XXIV. ENTIRE AGREEMENT/MODIFICATION.

This Contract and the Attachments hereto contain the entire agreement of the parties, and no representation, provision, warranty, term, condition, promise, duty or liability, expressed or implied, shall be binding upon or applied to either party, except as herein stated. No amendment or modification of any term, provision or condition of this Contract shall be binding or enforceable unless in writing and signed by each of the parties.

XXV. NOTICES.

All notices to any party hereunder shall be in writing, signed by the party giving it, and shall be sufficiently given or served, if personally served or if sent by registered mail addressed to the parties at their address indicated in this Contract.

This Contract is entered into this 12th day of August, 2015.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date thereof.

Christy White Associates

Name: Christy White, CPA
Address: 348 Olive Street
City/State/Zip: San Diego, CA 92103
Telephone: 619-270-8222
Fax: 619-260-9085

Southwestern Community College District

Melinda Nish, Ed.D.
Superintendent/President
900 Otay Lakes Road
Chula Vista, CA 91910-7299
Telephone: 619 482-6301/Fax: 619 482-6413

Are you a District employee? Yes No

Is a Credential or Special License required for this consultancy? Yes No

If yes, please specify and attach a copy of current License. _____

Signature: 

Date: 8/24/15

Signature: 

Date: 8-17-15

PURCHASING SEP 17 15 AM 10:34

Originator: Steven L. Crow, Ed.D., Vice President for Business & Financial Affairs

Account No.: 11-800000-660000-55110-10

Approved as to form by the office of the
Purchasing, Contracting & Central Services
Director
Approval No: A4560-15
Date: 8/24/15



June 30, 2015

Southwestern College
900 Otay Lakes Road
Chula Vista, CA 91910

Christy White, CPA

Michael Ash, CPA

Tanya M. Rogers, CPA, CFE

Heather Rubio

We are pleased to provide Southwestern College with the professional services described below. This letter is to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.

Christy White Associates will provide Southwestern College with Internal Audit Services for the period of July 1, 2015 to June 30, 2016, or until permanent staffing is obtained.

Scope of Engagement

- CWA will, under the direction of the District, provide internal audit support, including the audit of commercial warrants for a combined total of 15 hours per week.
- CWA will perform regular and routine audits of processes and procedures relating to the fiscal operation of the District. CWA will perform projects, as defined by the District, that have been determined to be within CWA's suitable skills and experience.
- The work produced by CWA is intended to be restricted for use by management and is not available for use by a 3rd party, without the expressed consent of the District.
- The consultation engagement cannot be relied on to disclose errors, irregularities, or illegal acts including fraud or theft. However, we will inform the appropriate level of management of any material errors or any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention.

We will not perform management functions or make management decisions on your behalf. However, we may provide advice and recommendations to assist your management in performing its functions and making decisions.

Southwestern College may request that we perform additional services not contemplated by this engagement letter. If this occurs, we will communicate with you regarding the scope and estimated cost of these additional services. Engagements for additional services may necessitate that we amend this letter or issue a separate engagement letter to reflect the obligations of both parties. In the absence of any other written communications from us documenting additional services, our services will be limited to and governed by the terms of this engagement letter.

SAN DIEGO
LOS ANGELES
SAN FRANCISCO/BAY AREA

Corporate Office:
348 Olive Street
San Diego, CA 92103

toll-free: 877.220.7229
tel: 619.270.8222
fax: 619.260.9085
www.christywhite.com

Christy White Associates
1000 B Street, Suite 1000

Client Responsibilities

You authorize us to accept instructions from your representative for this engagement.

As a condition to performing the services described above, Southwestern College agrees to:

- Make all management decisions and perform all management functions related to this agreement.
- Designate an individual with suitable skill, knowledge, or experience to oversee services we provide.
- Evaluate the adequacy and results of the services performed.
- Accept responsibility for the results of the services.
- Establish and maintain internal controls over the procedures and monitor ongoing activities.

Engagement Administration, Fees and Other

We will perform our services in accordance with Section 53060 of the Government Code and such other provisions of California law as may be applicable and the Statement on Standards for Consulting Services and applicable professional standards promulgated by the American Institute of Certified Public Accountants.

This engagement is limited to the professional services outlined above. Christy White Associates, in its sole professional judgment reserves the right to refuse to take any action that may be construed as making management decisions or performing management functions.

The above professional services will be performed based on data and information you provide to us. We will not verify or audit this information. We will not audit, review, or compile your financial statements. Therefore, our engagement cannot be relied upon to disclose errors, fraud, or theft.

Tanya Rogers, CPA, CFE and Christy White, CPA are
Tanya Rogers, CPA, CFE is the engagement partner and is responsible for supervising the engagement. We will assign appropriately trained and experienced professionals to perform the tasks associated with the engagement.

We agree to perform the engagement, the procedures of which are described above, at a rate of \$100 per hour for an experience staff member to perform internal auditing services. Any services performed by Tanya Rogers, CPA, CFE will be billed at a rate of \$165 per hour. Total invoiced amount is not to exceed \$75,000.

Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed the engagement. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination.

If any dispute arises among the parties hereto, the parties agree to first try in good faith to settle the dispute by mediation under Rules for Professional Accounting and Related Services Disputes before resorting to litigation. Costs of any mediation proceeding shall be shared equally by all parties.

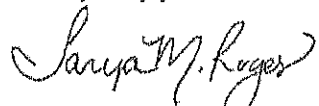
Client and consultant both agree that any dispute over fees charged by the consultant to the client will be submitted for resolution by arbitration. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that in the event of a dispute over fees charged by the accountant, each of us is giving up the right to have the dispute in a court of law before a judge or jury and instead we are accepting the use of arbitration for resolution.

It is expressly understood and agreed by both parties that Christy White Associates, while carrying out and complying with any of the terms and conditions of this agreement, is an independent contractor and is not an employee of Southwestern College.

Christy White Associates has a non-licensee owner who may provide client services in your contract under the supervision of a licensed owner.

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

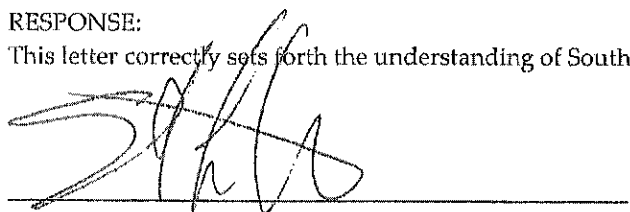
Very truly yours,



Tanya Rogers, CPA, CFE
Partner
Christy White Associates

RESPONSE:

This letter correctly sets forth the understanding of Southwestern College.



Signature

VP Business & Financial Affairs

Title

7-7-2015

Date

Southwestern Community College District
Amendment to Agreement
With
Christy White Associates

Governing Board Date: July 12, 2016
Amendment No.: One (1)

FIRST AMENDMENT TO AGREEMENT WITH CHRITY WHITE ASSOCIATES

THIS AMENDMENT to AGREEMENT is made this 12th day of July, 2016, between **CHRISTY WHITE ASSOCIATES** hereinafter referred to as "**CONTRACTOR**" and the **SOUTHWESTERN COMMUNITY COLLEGE DISTRICT**, hereinafter referred to as "**DISTRICT**".

The CONTRACTOR and DISTRICT do mutually agree as follows:

1. To amend AGREEMENT A4560.15 approved by the Governing Board on August 12, 2015 to provide Internal Audit Services. The AGREEMENT is amended to include the following:
 - a) Extend the term of the AGREEMENT for an additional year beginning July 1, 2016 through June 30, 2017, OR, until the Internal Auditor position is filled at the District.
 - b) Increase the AGREEMENT value by FORTY THOUSAND DOLLARS AND NO/100 (\$40,000.00) from SEVENTY-FIVE THOUSAND DOLLARS AND NO/100 (\$75,000.00) for a new not to exceed total AGREEMENT amount of ONE HUNDRED FIFTEEN THOUSAND DOLLARS AND NO/100 (\$115,000.00).

Where any Article or portion is amended or superseded, the balance of that Article not specifically amended or superseded shall remain in effect as originally written. Where any Article or portion thereof is supplemented, that supplement shall be considered added thereto, and the original provisions of the Article shall remain in effect as originally written. Where any Paragraph or Section is referenced, such Paragraph or Section is superseded and replaced by the language herein. Except as amended herein, the terms and conditions of AGREEMENT A4560.15 shall remain in full force and effect.

IN WITNESS WHEREOF, said PARTIES have executed this AMENDMENT as of the date first above written.

CHRISTY WHITE ASSOCIATES

By: Christy White

Christy White, CPA
348 Olive Street
San Diego, CA 92103
Telephone: 619-270-8222
Fax: 619-260-9085

Date 7-19-16

SOUTHWESTERN COMMUNITY
COLLEGE DISTRICT

By: T. Flood MS

Superintendent/President
900 Otay Lakes Road
Chula Vista, CA 91910

Date 7-11-16

Originator: Tim Flood, Vice President for Business and Financial Affairs
Account No.: 11-800000-660000-55110-10 (General Fund)

Approved as to form by the office of the
Superintendent, Contracting & Central Services
Director Amendment No. 1 to
Agreement No. A4560.15
Date 6/28/16