

## Appendix E

### **SOUTHWESTERN COMMUNITY COLLEGE DISTRICT Independent Contractor Agreement**

**(For short or long term contracts with a value of \$3,001 and over)**

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 \_\_\_\_\_ 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:

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A. **TYPE OF AGREEMENT**

- (a) This is an "On-Call" type of contract with the declared and acknowledged intention and meaning to provide District with the services described in Article I above for project sites located in the District on an "as needed" basis.

B. **ORDERING PROCEDURES**

- (a) The District shall furnish the Consultant with a written Service Order Request. The request shall include:
- i. A description of the specified work required.

- ii. The anticipated performance period.
  - iii. Any other pertinent information
- (b) The Consultant shall, in writing and within the time specified in the Service Order Request, provide to the District:
  - i. A detailed price estimate for the specified work required.
  - ii. Proposed date of completion of service for the required service order.
- (c) Discussions/Negotiations – Upon receipt of the proposal, the District, as needed, will review the proposal to ensure acceptability to the District, enter into such discussions with the Consultant as may be necessary to revise the proposal estimate, and effect whatever internal processes are required.
- (d) Execute Award – Upon completion of this process, the District shall execute the Service Authorization/Task Order (SAO) and forward it to the consultant. Only upon receipt of such executed SAO, signed by the District, shall the Consultant commence work.
- (e) Each SAO shall include as a minimum:
  - i. Date of Issue
  - ii. Contract and Service Authorization Number
  - iii. Description of the work services and project site location.
  - iv. The delivery date or period of performance and milestones.
  - v. Any other information deemed necessary in performance of the order.
- (f) 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.

## 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 \_\_\_\_\_ DOLLARS (\$) for services and product delivery and subsequent receipt of invoice for services rendered and products delivered by Contractor.
- (b) Invoices 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.

- (a) 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.
- (b) Contractor certifies that Contractor has not and will not receive pay for the same services or days of Service by any other public agency.
- (c) 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 the Contract.

### III. PERIOD OF PERFORMANCE.

- (a) This period covered by this agreement shall commence on \_\_\_\_\_ and shall terminate on \_\_\_\_\_.
- (b) This contract is for a "Base Period" of three (3) years and two (2) Option Periods. The Base period shall consist of 36 months as determined by the District above. The District has the option to extend the term of the contract for two (2) additional period consisting of 12 months each.
- (b) The District may extend the term of this contract by giving written notice of it's intent to exercise it's option, at least 30 days before the contract Base Period expires.
- (c) The total duration of this contract, including the exercise of the Option, shall not exceed 60 months.

### 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.

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 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 and employees as additional insured under said policy.

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.

\*\*\*signatures on following page\*\*\*

This Contract is entered into this \_\_\_day of \_\_\_\_\_, 201\_.

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

INSERT FIRM NAME HERE

Southwestern Community College District

Name:

Melinda Nish, Ed.D.

SS#/Federal Tax ID:

Superintendent/President

Address:

900 Otay Lakes Road

City/State/Zip:

Chula Vista, CA 91910-7299

Telephone:

Telephone: 619 482-6301/Fax: 619 482-6413

Fax:

**Signature:** \_\_\_\_\_

Date: \_\_\_\_\_

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: \_\_\_\_\_

**Originator:**

**Account No.:**