



8/20/09 = REMINDER – Use NEW log numbers and program file structure numbers; do not use a PROGRAM level log/file number

Insert appropriate references in Exhibit C-17

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this <ENTER DATE>, 200n , in the City of Marysville, County of Yuba, State of California, by and between YUBA COMMUNITY COLLEGE DISTRICT, a California Community College District, (hereinafter referred to as "DISTRICT") and <ENTER CONSULTANT NAME> **CONTRACTOR** (hereinafter referred to as "CONTRACTOR") having its principal place of business at <ENTER ADDRESS, STATE, ZIP CODE>

WITNESSETH:

WHEREAS, DISTRICT desires to engage CONTRACTOR to perform certain of the professional services, and

WHEREAS, CONTRACTOR represents that it is fully qualified and willing to perform the services required hereunder for <enter brief service description , Project Name, and "J-nn" (as appropriate)>

NOW THEREFORE, for and in consideration of the covenants and conditions hereinafter set forth, the parties do mutually agree as follows:

I. STATEMENT OF WORK

CONTRACTOR hereby agrees to perform the tasks and services set forth in Exhibit "A", entitled "Statement of Services" and Exhibit "D" Request for Proposal (RFP) for Custodial / Janitorial Services for Woodland Community College's Colusa County Outreach Facility (RFP No. 11-004), attached hereto and made a part hereof, in accordance with the terms and conditions, sequence, time, and manner expressed herein.

II. COMPENSATION

For and in consideration of the services performed by CONTRACTOR hereunder, DISTRICT agrees to pay CONTRACTOR the sums set forth under Exhibit "B" entitled, Compensation and Payment , attached hereto and made a part hereof.

III. TERMS AND CONDITIONS

CONTRACTOR agrees to be bound by the General Provisions for Professional Services Agreement identified as Exhibit "C", also attached hereto and made a part hereof.

IV. TERM

The Term of the Agreement shall commence as of the date set forth above and shall expire upon the CONTRACTOR's completion of the services set forth herein. The foregoing notwithstanding, the CONTRACTOR shall complete the services hereunder in a prompt manner; if the District establishes a schedule for the CONTRACTOR's completion of the services under this Agreement or portions thereof, the CONTRACTOR's completion of services under this Agreement shall comply with such schedule. The CONTRACTOR shall be liable to the District for the consequences of the CONTRACTOR's failure to complete the services under this Agreement in a prompt manner or for failure to comply with a District established schedule for completion of the services or portions thereof.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed this Agreement effective on the date first written above.

"DISTRICT"
YUBA COMMUNITY COLLEGE DISTRICT
CONTRACTOR

"CONTRACTOR"
<ENTER CONSULTANT NAME>

By: _____

by: _____

Print Name: AI Alt

Print Name: _____

Title: Vice Chancellor, Administrative Services

Title: _____

Date: _____

Date: _____

EXHIBIT "A"
STATEMENT OF SERVICES

1. CONTRACTOR represents that it has the expertise, experience, personnel, and resources to perform the desired services. The CONTRACTOR further represents that CONTRACTOR and all personnel engaged to provide/perform services hereunder are and shall remain fully qualified and authorized, permitted and/or licensed under applicable law or regulations to perform such services. None of the work or services shall be subcontracted without the prior written approval of DISTRICT.

2. CONTRACTOR will perform or cause to be performed those services described below in accordance with all laws, regulations, applicable codes and with the provisions of this agreement. CONTRACTOR shall use its best efforts to conduct the services in an expeditious and timely manner. All services hereunder shall be provided/performed in accordance with the standard of care for CONTRACTORs providing/performing similar services.

3. CONTRACTOR in Exhibit "D".

4. No other terms and conditions shall apply other than as specified in Exhibit "C", Section 17, "Extent of Agreement."

End of Page

EXHIBIT "B"
COMPENSATION AND PAYMENT

1. For and in consideration of the performance and completion of the services hereunder, DISTRICT agrees to pay CONTRACTOR as follows:

ENTER DESCRIPTION OF COMPENSATION

or

Pursuant to consultant's proposal, dated 00/00/0X, attached as Exhibit "D".

\$ _____

2. Once each month, CONTRACTOR shall submit an invoice for services rendered during the previous calendar month. CONTRACTOR invoice is to include the District Purchase Order number which will be provided independently by the District. Fees are to be invoiced on a monthly, single invoice.
3. Within thirty (30) days DISTRICT shall promptly pay CONTRACTOR the amount due. If the CONTRACTOR fails to timely and fully perform material obligations of the CONTRACTOR hereunder, notwithstanding any provision of the Agreement to the contrary, the DISTRICT may withhold from any amount due the CONTRACTOR, with the withheld amounts being disbursed to the CONTRACTOR after the CONTRACTOR has fully cured such failure to perform, less costs, expenses, losses or damages sustained by the DISTRICT as a result of such failure to perform.
4. CONTRACTOR shall not perform any additional service, or incur any additional expense in the performance of this Agreement without the prior written approval of DISTRICT.
5. DISTRICT shall not be responsible for payment or reimbursement of monies for additional services performed without the prior written approval of DISTRICT.
6. Should a change of scope or additional services be required, payment for such services will be determined at the time of DISTRICT's written approval, and such shall be amended to this Agreement.
6. 7. DISTRICT will not be responsible for reimbursement for costs invoiced more than 90 days after the costs were incurred.

End of Page

EXHIBIT "C"
GENERAL PROVISIONS FOR
PROFESSIONAL SERVICES AGREEMENT

1. Responsibility
CONTRACTOR shall be solely responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, calculations, data, reports or other Services to be provided hereunder, and shall, without any additional compensation, correct or revise any errors or deficiencies promptly upon notice or discovery thereof, provided that the CONTRACTOR'S obligation to correct or revise errors/discrepancies in the services provided is in addition to and not in lieu of the CONTRACTOR's liability to the DISTRICT for losses, costs, expenses or damages sustained by the DISTRICT as a result of such errors/deficiencies. Neither a review, approval or acceptance of, nor payment for, any of the Services required hereunder shall be construed as a waiver of any rights under this Agreement by DISTRICT or of any cause of action arising out of the performance of this Agreement, and Subcontractor shall be liable for all damages caused by or arising out of CONTRACTOR'S negligent performance of any Services provided or required hereunder.

2. Changes
DISTRICT may, upon ten (10) days written notice, make changes in the Scope of Services to be provided hereunder. If such changes result in an increase or a decrease in Services, the time required to performance thereof, or the compensation thereof, this Agreement shall be modified accordingly in writing in order for such changes to be valid.

3. Termination
 - A. Performance of the work and Services hereunder may be terminated by DISTRICT at any time, in whole or in part:
 - (1) Whenever CONTRACTOR shall default in its obligations hereunder or fails to make progress in the prosecution of the work or Services; or
 - (2) For the convenience of DISTRICT.

 - B. Termination shall be effected by delivery to CONTRACTOR of the Notice of Termination, specifying whether said termination is for default of CONTRACTOR or for the convenience of DISTRICT, the extent to which performance of the work and Services is terminated; and the date upon which said termination is to become effective. If, after Notice of Termination for default, it is determined that CONTRACTOR was not in default, or that CONTRACTOR 's failure to fulfill its obligations was due to causes beyond its control and without its fault or negligence, the Notice of Termination shall be deemed to have been issued for the convenience of DISTRICT.

- C. Following receipt of Notice of Termination, CONTRACTOR shall discontinue performance on the date and to the extent specified therein, and deliver to DISTRICT the completed or partially completed plans, information, data, reports, estimates, summaries, materials, or other documents which, if performance had been completed, would be furnished to DISTRICT. CONTRACTOR shall continue performance of such part of the work and Services which are not terminated by the Notice of Termination. CONTRACTOR shall prepare and submit a termination claim for services satisfactorily performed, which shall include costs and expenses, reimbursable in accordance with the Terms of this Agreement, not previously paid to CONTRACTOR, incurred prior to the effective date specified in the Notice of Termination, and DISTRICT may agree upon the whole or any part of the amount(s) claimed by CONTRACTOR on account of the termination or partial termination.
- D. In the event of termination for default, DISTRICT shall be entitled to complete the work and Services hereunder or engage others to do so and in addition to whatever remedies it may have at law if the expense of completing said work and Services is greater than the amount CONTRACTOR was to receive as compensation therefore, DISTRICT shall be entitled to recover the difference from CONTRACTOR.

4. Confidentiality

CONTRACTOR hereby agrees that all information provided by DISTRICT relating to the Services hereunder shall be considered confidential and proprietary, and shall not be reproduced, transmitted, used or disclosed by the CONTRACTOR without the written consent of DISTRICT, except as may be necessary for the non-disclosing party to fulfill its obligations hereunder; provided that the limitation shall not apply to any information or portion thereof, which is within the public domain at the time of its disclosure. The requirements of this provision shall survive the term of this Agreement.

5. Ownership and Reuse of Documents

All non-proprietary data, information, reports, drawings, renderings, or other documents or materials prepared by CONTRACTOR hereunder shall become the property of DISTRICT whether or not the work covered thereby is executed; provided that CONTRACTOR may at the CONTRACTOR'S cost and expense reproduce such items to retain as a record copy for its files.

6. Relationship

The legal relationship of CONTRACTOR to DISTRICT hereunder shall be that of an independent contractor and not that of an agent, employee or joint venturer.

7. Examination of Records

If the Services performed by CONTRACTOR hereunder are in support of any government contract or program, or under a cost reimbursable type agreement, or for any authorized additional service or reimbursable expense, Subcontractor shall until the expiration of six (6) years after final payment hereunder, maintain such books and records under generally recognized accounting methods and permit inspection by DISTRICT or any of its authorized representatives.

8. Compliance with Laws

CONTRACTOR shall comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and orders in effect throughout the term of this Agreement, including, but not limited to Executive Order No. 11246 of September 24, 1965, as amended (regarding Equal Employment Opportunity), and the orders of the Secretary of Labor pursuant thereto.

9. Insurance

Prior to commencing work, the CONTRACTOR shall procure and maintain at CONTRACTOR'S own cost and expense for the duration of this Agreement the following insurance against claims which may arise from or in connection with the performance of the work or services hereunder by the CONTRACTOR, its agents, representatives, employees or subCONTRACTORS.

A. Minimum Limits of Insurance.

Bidder's must meet or exceed District's required minimum insurance requirements of this Contract: (a) Contractor shall maintain a Commercial General Liability insurance policy (on Insurance Services Office form number CG 0001 – "occurrence" form) insuring Contractor for an amount not less than One Million Dollars (\$1,000,000.00) per occurrence with an annual aggregate limit of not less than Two Million Dollars (\$2,000,000.00) for bodily injury, personal injury and property damage.

Contractor shall maintain an Automobile Liability insurance policy (on Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto," and endorsement CA 0025) insuring Contractor for an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.

Contractor shall maintain a Crime insurance policy in an amount not less than One Hundred Thousand Dollars (\$100,000) with the District named as Joint Loss Payee. Coverage shall include coverage for District's Property on the District's premises, with coverage, at minimum, as broad as ISO endorsement form CR 04 01 03 00.

Contractor shall maintain a Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Contractor as follows:

(1) This policy shall provide coverage for Workers' Compensation (Coverage A) in accordance with California law.

(2) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).

All of the following endorsements are required to be made a part of each of the required policies, except for the Workers' Compensation and Employers' Liability policies:

(1) "The Yuba CCD and its Board of Trustees, officers, employees, officers and agents are hereby added as additional insured's, but only as respects work done by, for on behalf of the named insured."

(2) "This policy shall be considered primary insurance as respects any other valid and collectible insurance, self-insurance or joint self-insurance the District may possess, including any self-insured retention the District may have, and any other insurance the District does possess shall be considered excess insurance only and shall not contribute with it."

Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

E. Verification of Coverage.

CONTRACTOR shall furnish the DISTRICT with written evidence acceptable to the DISTRICT of insurance and minimum coverage amounts required by this Agreement.

F. SubCONTRACTORS.

Prior to authorizing work by a SubCONTRACTOR to proceed, CONTRACTOR shall provide to the DISTRICT evidence acceptable to the DISTRICT of insurance demonstrating satisfactory compliance by each SubCONTRACTOR with the insurance requirements stated herein.

10. Indemnity

A. To the fullest extent permitted by law, the CONTRACTOR shall indemnify, defend and hold harmless the District and its employees, officers, Board of Trustee, Trustees, agents and representatives from any and all claims, demands, losses, responsibilities or liabilities for: (i) injury or death of persons; (ii) damage to property or: (iii) other costs or charges, directly or indirectly arising out of or attributable, in whole or in part, to the negligent or willful acts, omissions, errors and/or other conduct of CONTRACTOR, its Design CONTRACTORS or the employees, agents and representatives of CONTRACTOR or any of its Design CONTRACTORS in the performance of obligations or services or in providing work product under this Agreement.

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The foregoing shall include without limitation, attorneys fees and costs incurred by the District. The provisions hereof shall apply during the period of CONTRACTOR'S performance under this Agreement and shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statue of Limitations.

11. Remedies.

The rights and remedies set forth herein shall be in addition to any other remedies provided by law, and waiver by DISTRICT of any provision hereunder or a breach thereof by DISTRICT shall not be deemed a waiver of future compliance thereof and such provision shall continue in full force and effect.

12. Severability.

In the event that any term or provision of this Agreement is held to be illegal, invalid, or unenforceable under the laws, regulations or ordinances of any federal, state, or other government to which this Agreement is subject, such term or provision shall be deemed severed from this Agreement and the remaining terms and provisions shall remain unaffected thereby and continue in full force.

13. Notices.

All notices required or permitted under this Agreement shall be considered as duly given to any party for all purposes hereof only if given in writing and hand delivered; or sent by registered or certified mail, postage prepaid and return receipt requested; or sent by electronic email; with confirming receipt; telex, or telegram, and also confirmed by registered mail, postage prepaid and return receipt requested, addressed as set forth below, or to such other address as may be designated by notice given as provided above. All notices shall be effective upon first receipt, unless otherwise specified herein.

DISTRICT: Yuba Community College District
2088 North Beale Road,
Marysville, CA, 95901
Attention: Vice Chancellor Administrative Services

CONSULTANT: insert consultant/company name.
Attention: Insert
Address,
City, State, Zip Code CONTRACTOR **CONTRACTOR**

14. Modification.

This Agreement may only be modified by a written amendment hereto, duly executed by both parties.

15. Successors and Assignment.

CONTRACTOR binds itself, its successors, assigns, and legal representatives to DISTRICT with respect to all of the covenants of this Agreement and further agrees that it shall not sell, assign, transfer, mortgage, pledge or in any manner encumber its interests in this Agreement or in any proceeds from this Agreement without the prior written consent of DISTRICT. In the event that CONTRACTOR violates the foregoing prohibition, or in the event that CONTRACTOR without the prior written consent of DISTRICT, which consent shall not be unreasonably withheld, sells, assigns, transfers, mortgages, pledges or in any manner encumbers, except as security for credit agreements, all or substantially all of its corporate assets, or directly or indirectly undergoes a change in control of its ownership, DISTRICT shall be entitled, at its sole option:

- A. To require the CONTRACTOR'S successor to continue to perform under this Agreement and to continue to satisfactorily fulfill CONTRACTOR'S obligations under this Agreement; or
- B. To terminate this Agreement. In such case CONTRACTOR shall be responsible for any and all liabilities arising from such termination. In the event that DISTRICT replaces CONTRACTOR with another CONTRACTOR after such termination, CONTRACTOR shall be responsible for any and all costs, expenses and liabilities arising from such substitution. In any event, CONTRACTOR shall remain liable for any and all work product or services provided by it prior to the termination.

This Agreement and the terms hereof are binding upon and inure to the benefit of the successors and assigns of both the District and the CONTRACTOR.

16. Disputes.

- A. Continuation of CONTRACTOR Services. Except in the event of the District's failure to make undisputed payment of the Contract Price due the CONTRACTOR, notwithstanding any disputes between District and CONTRACTOR hereunder, CONTRACTOR and District shall each continue to perform their respective obligations hereunder; including the obligation of the CONTRACTOR to continue to provide and perform services hereunder pending a subsequent resolution of such disputes.
- B. Mandatory Mediation. All claims, disputes and other matters in controversy between the CONTRACTOR and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation conducted under the auspices of the American Arbitration Association ("AAA")

and the Construction Mediation Rules of the AAA in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the CONTRACTOR commencing arbitration proceedings.

- C. Binding Arbitration. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof which are not resolved through the mandatory mediation procedures set forth above shall be resolved by binding arbitration conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time of the filing of a Demand for Arbitration, provided that the Parties may by mutual agreement modify such Rules or adopt other rules governing the conduct of arbitration proceedings.
- D. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim; dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.
- E. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to the Agreement signed by the District, CONTRACTOR and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.
- F. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

17. Extent of Agreement.

The Agreement and Exhibit A "Statement of Services," Exhibit B "Compensation and Payment," and Exhibit C, "General Provisions for Professional Services Agreement," Exhibit D, "Sample Invoice," *(if appropriate)* and Exhibit E, *"insert reference to consultants proposal dated xx/xx/xx if appropriate), (other exhibits as appropriate)*

Exhibit "D" Request for Proposal (RFP) for Custodial / Janitorial Services for Woodland Community College's Colusa County Outreach Facility (RFP No. 11-004) contain all of the promises, representations and understandings of the parties hereto and supersedes any previous understandings, commitments, proposals or agreements, whether oral or written, and may only be modified as hereinbefore provided.

18. Governing Laws.

Unless otherwise specified herein, this Agreement shall be governed by the law of the State of California.

19. Professional Registration.

If the CONTRACTOR'S Services under this Agreement involve the production of documents or drawings that require signing or sealing by a registered professional, CONTRACTOR warrants that it has such qualified person assigned to this Project who is registered in the State(s) of California.

20. Time.

Time is of the essence in the performance and completion of the CONTRACTOR'S obligations under the Agreement.

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