

INSTRUCTIONS FOR USE

Our form **Agreement for Services** is designed to be broadly adaptable to a wide variety of service contracts. These instructions are intended to assist in completing the form and preparing the required attachments. The Agreement for Services is not intended for use for specialty services such as architectural, engineering, and inspection services.

1. FILLING IN THE BLANKS

- **Preamble:** The initial paragraph should be completed with the date of execution of the agreement and the full names of the parties, including a one or two-word description of the type of services provided by the consultant.
- **Section 4, Term of Agreement:** Fill in the starting and ending dates for the period during which the services are to be provided.
- **Signature Block:** Print the name and title of the individuals who are to sign the agreement.
- **Section 9, Insurance:** Check the appropriate blank in subsections (a), (b), (c), and (e) to indicate which types of insurance listed are required for the particular contract.

Note: We are frequently asked whether the insurance limits included in our form agreements are required by law. With the exception of Workers' Compensation Insurance, they are not; they are simply recommended amounts of coverage. The amount of coverage required should generally correlate to the degree and nature of any risk involved with the contract. The degree of risk is often entirely unrelated to the dollar value of the contract, i.e., a low dollar value contract could involve a high risk activity (e.g., hazmat assessment) and a high dollar value contract could involve low risk (e.g., curriculum services). We suggest that clients using our agreement should consult their risk manager and/or insurer with questions about the type and scope of coverage appropriate for the circumstances of a particular contract.

- **Section 10, Notice:** The bracketed place holders should be replaced with the indicated information for each party, as indicated.

2. ATTACHMENTS A AND B.

- **Attachment A, Scope of Services:** Attachment A should contain the basic deal points. It should state, in plain English, what services the consultant is to provide, when and where those services are to be provided, and other relevant information such as what work product will be required of the consultant, and by when. The form agreement is largely generic, adaptable to various contracts, so Attachment A should set forth everything that is important to a district for a particular contract. The nature of the information included in Attachment A will necessarily vary depending on the nature of the contract itself, but can often be approached by starting with the five W's: who, what, where, when, and why and/or how.
- **Attachment B, Compensation:** Attachment B should likewise set forth in plain English how the consultant is to be compensated, including the basis for compensation, which could be hourly, in which case we recommend including a not to exceed amount, or it could be a lump sum agreement. If the consultant is to be reimbursed for any expenses, e.g., travel or materials, that should be stated explicitly, including what expenses will be reimbursable, the rate for reimbursement, and we also recommend including a not to exceed amount for reimbursable expenses. In most cases, when a not to exceed amount is included in a contract, it is advisable to build in some flexibility by adding language such as "... not to exceed a total of \$[amount] without prior written authorization from the District."

GENERAL PROVISIONS

1. **Consultant's Warranty:** District has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by District shall not operate as a waiver or release.
2. **Status of Consultant:** The parties intend that Consultant, in performing the services herein specified, shall act as an independent consultant and shall have control of the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of District and is not entitled to participate in any pension plans, insurance, bonus or similar benefits District provides its employees.
3. **Conflict of Interest:** Consultant represents that it presently has no interest which would conflict in any manner or degree with the performance of services contemplated by this Agreement. Consultant further represents that in the performance of this Agreement, no person having such interest will be employed. If Consultant participates in the planning, development, or negotiation of a contract for the District, Consultant may not subsequently acquire a financial interest in that contract in violation of Government Code section 1090. Section 1090 violations include, but are not limited to, entering into a contract to perform any part of a project if Consultant assisted the District in preparing the plans and specifications for that project.
4. **Extra (Changed) Work:** Only the Superintendent may authorize extra (and/or changed) work. The parties expressly recognize that District and school personnel are without authorization to either order extra (and/or changed) work or waive contract requirements. Failure of the Consultant to secure proper authorization for extra work shall constitute a waiver of any and all right to adjustment in the contract price or contract time due to such unauthorized extra work and the Consultant thereafter shall be entitled to no compensation whatsoever for the performance of such work.
5. **Nondiscrimination:** Consultant shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, handicap or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.
6. **Transfer of Rights:** Consultant assigns to District all rights throughout the work in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications now or later prepared by Consultant in connection with the project, if any. Consultant agrees to take such actions as are necessary to protect the rights assigned to District in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this contract include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Consultant may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of District.
7. **Ownership of Work Product:** District shall be the owner of and shall be entitled to immediate possession of accurate reproducible copies of any design computations, plans, correspondence or other pertinent data and information gathered or computed by Consultant prior to termination of this Agreement by District or upon completion of the work pursuant to this Agreement.

8. Indemnification:

- (a) Consultant shall indemnify, defend with counsel acceptable to District, and hold harmless to the full extent permitted by law, District and its Board of Trustees, officers, agents, employees and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the project or its failure to comply with any of its obligations contained in these contract documents, except such Liability cause by the active negligence, sole negligence or willful misconduct of the District. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- (b) Consultant shall be liable to District for any loss or damage to District property arising from or in connection with Consultant's performance hereunder.

9. Insurance: With respect to the performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, if any, to maintain insurance as indicated below:

- (a) Required/ Not Required: Worker's compensation insurance with statutory limits as required by the Labor Code or the State of California. The policy shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the District."
- (b) Required/ Not Required: Commercial or Comprehensive General Liability insurance covering bodily injury and property damage using an occurrence policy form, in an amount no less than \$1,000,000 per occurrence, \$2,000,000 aggregate. Such insurance shall include, but not be limited to: premises and operations liability, independent consultant's liability, and personal injury liability.
- (c) Required/ Not Required: Automobile liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit for each occurrence. Such insurance shall include coverage for owned, hired, and nonowned vehicles.
- (d) Each such comprehensive or commercial general liability and automobile liability insurance policy shall be endorsed with the following specific language:
- (1) District, its officers and employees, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.
 - (2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.
 - (3) The insurance provided herein is primary coverage to District with respect to any insurance or self-insurance programs maintained by District and no insurance held or owned by District shall be called upon to contribute to a loss.
 - (4) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to District.

(e) Required/ Not Required: Professional Liability (Errors and Omissions) Insurance for all activities of the Consultant arising out of or in connection with this Agreement is an amount no less than \$1,000,000 combined single limit for each occurrence endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to District."

(f) **Documentation:** The following documentation shall be submitted to the District:

(1) Properly executed certificates of insurance clearly evidencing all coverages, limits, and endorsements required above. The certificates shall be submitted prior to commencement of services under this Agreement.

(2) Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.

(3) Upon District's written request, certified copies of insurance policies. Such policy copies shall be submitted within thirty (30) days of District's request.

(g) **Policy Obligations:** Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

(h) **Material Breach:** If Consultant, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. District, at its sole option, may terminate this Agreement and obtain damages from the Consultant resulting from the breach. Alternatively, District may purchase such required insurance coverage, and without further notice to Consultant, County may deduct from sums due to Consultant any premium costs advanced by District for such insurance. These remedies shall be in addition to any other remedies available to District.

10. **Method and Place of Giving Notice, Submitting Bills and Making Payments:** All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notice, bills and payments sent by mail shall be addressed as follows:

District:

Marin Community College District
835 College Avenue
Kentfield, CA 94904
Attention: Asst. Superintendent/
VP of Administrative Services

Consultant:

Consultant Name _____
Address _____
Title _____

and when so addressed, shall be deemed given upon receipt via United States Mail, postage prepaid, provided it is forwarded certified, or registered with proof of receipt. In all other instances, notices, bills, and payments shall be deemed given at the time of actual personal delivery. Changes may be made in names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.

11. Termination:

(a) District may terminate this Agreement by giving thirty (30) calendar days written notice to Consultant. In the event District elects to terminate the Agreement without cause, it shall pay Consultant for services rendered to such date.

(b) If either party fails to perform any of its obligations hereunder, within the time and in the manner hereunder provided or otherwise violates any of the terms of the Agreement, either party may terminate this Agreement by giving written notice of such termination, stating the reason for such termination. In such event, Consultant shall be entitled to receive payment for all services satisfactorily rendered provided, however, that there shall be deducted from such amount the amount of liquidated damage, if any, sustained by District by virtue of any breach of the Agreement by Consultant.

12. Due Performance: Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may, in writing, demand adequate assurance of due performance and until such written assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received.

13. Due Performance: Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may, in writing, demand adequate assurance of due performance and until such written assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received.

14. Taxes: Consultant agrees to file federal and state tax returns and pay all applicable state and federal taxes on amounts paid pursuant to this Agreement. In case District is audited for compliance regarding any applicable taxes, Consultant agrees to furnish District with proof of payment of taxes on those earnings.

15. Dispute Resolution: The parties agree to make a good faith effort to resolve any dispute arising from or relating to this Agreement through mediation prior to commencing litigation. Within sixty (60) days following a written request by either party to mediate a dispute that has not been resolved by informal negotiation, the parties shall mutually agree upon a mediator, schedule a mediation, and shall share the costs of mediation equally, except costs incurred by each party for representation by legal counsel.

16. Choice of Law and Venue: This Agreement shall be governed by California law, and venue shall be in the Superior Court of the County of Marin, California, and no other place.

17. Merger: This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

18. Assignment/Delegation: Neither party hereto shall assign, sublet or transfer any interest in this Agreement or any duty hereunder without written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented.

19. No Third-Party Beneficiaries: There are no intended third-party beneficiaries to this Agreement.

20. **No Waiver of Breach:** The waiver by District of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
21. **Force Majeure:** If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, failure of power, riots, insurrection, war, fire or other casualty, or other reason beyond the reasonable control of the party delayed, excluding financial inability ("Force Majeure Event"), performance of that act shall be excused for the period during which the Force Majeure Event prevents such performance, and the period for that performance shall be extended for an equivalent period. Delays or failures to perform resulting from lack of funds shall not be Force Majeure Events.
22. **Severability:** If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, in part or in whole, the remaining provisions, or portions of the Agreement shall remain in full force and effect.
23. **Headings:** The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.
24. **Execution in Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
25. **Authorization:** Each individual executing this Agreement, or its counterpart, on behalf of the respective party, warrants that he/she is authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which he/she represents.
26. **Attachments:** The following Attachments, attached hereto, are incorporated herein by reference:

Attachment A - Scope of Services

Attachment B - Compensation

ATTACHMENT A: SCOPE OF SERVICES

Consultant shall provide services to the District as follows:

ATTACHMENT B: COMPENSATION

District shall compensate Consultant for the services provided pursuant to this Agreement as follows:

Account number to be charged (FOAP):

_____ - _____ - _____ - _____