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5 MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT
AGREEMENT FOR CONSULTANT SERVICES
(“AGREEMENT”)

10 DATE: <>

15 MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT
2411 West 14th Street
Tempe, AZ 85281
480-731 -8520

20 and

<> name
<> address
<> city and state
<> voice phone
<> fax phone
<> e-mail

25
30 (“CONSULTANT”)

<> PROJECT
<> Project number
RFP Number <>

35 **BACKGROUND**

40 **A.** The real property on which the most of the facilities of the Maricopa County Community College DISTRICT (DISTRICT) sit, and the facilities themselves, are owned by the DISTRICT. The DISTRICT, a political subdivision of the State of Arizona, owns, manages, operates, and finances the real property and facilities on that property, and also leases facilities for the DISTRICT’s use.

45 **B.** The DISTRICT, desires to enter into this Agreement for professional services to be provided by the CONSULTANT to support the educational goals and objectives of the DISTRICT. The CONSULTANT represents itself as competent and capable of accomplishing the specific requirements of this Agreement to the satisfaction of the DISTRICT.

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AGREEMENT

The parties agree as follows:

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1. **Duration.** The term of this Agreement will begin on \leq and expire on \leq unless terminated earlier under Paragraph 6. Should a project or purchase order be in process at the time of the end date of this Contract, the Contract automatically will be extended through the completion of this work only and final payment is made.

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2. **Projects. CONSULTANT may not begin work until it receives a purchase order from the DISTRICT.** CONSULTANT shall provide those services set forth on Exhibit "A" and as attached to this Agreement ("Services"). The CONSULTANT'S Services and work the project identified in each Exhibit A shall comply with current applicable laws, statutes, ordinances, rules, regulations, building and construction codes, and with generally accepted design and engineering standards, including Chapter 4, Title 34 A.R.S. When no local or
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state codes apply, the current edition of the Uniform Building, Plumbing and Mechanical Codes, the National Electrical Code, State and Federal Safety and Health laws, State of Arizona Fire Code, and National Fire Protection Association Standards in effect at the time the purchase order for the specific project or Work is issued, shall apply. During any phase or portion of this Agreement, if the Consultant discovers or suspects previously unidentified hazardous materials, it shall notify the DISTRICT in writing immediately.

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3. **Compensation and Reimbursement.** The DISTRICT agrees to pay CONSULTANT, as consideration for performance of the Services, and to reimburse CONSULTANT for expenses, as set forth and outlined in Exhibit "A." Where the CONSULTANT's proposal differs in terms or conditions from this Contract, this Agreement's terms and conditions shall govern. All purchase orders shall be considered FIXED FEE agreements unless specifically stated otherwise in the purchase order, regardless of the wording within the
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CONSULTANT's proposal.

The DISTRICT will pay and reimburse CONSULTANT upon receipt of an itemized invoice specifying the compensation owed, the items for which reimbursement is sought, the Services provided and the dates that it
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provided them. Where a project budget is provided to the Consultant at the beginning of a project and the low responsive, responsible bid exceeds that amount, at its option, the DISTRICT may seek additional internal funding and proceeding with the project as bid, with no additional fee increase due to the Consultant; or, the DISTRICT may require the CONSULTANT to redesign and then re-bid of the project to meet the budget at no additional fee to the DISTRICT.

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4. **Representations.**

CONSULTANT represents itself as competent and capable of accomplishing the specific requirements of this Agreement to the satisfaction of the DISTRICT. CONSULTANT represents that it shall perform the Services in a
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skilled, competent, experienced, prudent, and professional manner. CONSULTANT shall complete project assignments on the schedule provided by the DISTRICT and agreed to by the CONSULTANT, conforming to the standards of quality generally recognized and accepted within its profession. CONSULTANT shall have and maintain the proper professional registration to perform the Services.

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CONSULTANT agrees to comply with all Equal Employment/Affirmative Action laws promulgated by the governments of the United States and the State of Arizona.

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5. **Other Services.** If the DISTRICT requests the CONSULTANT to provide additional work, or if the CONSULTANT believes that the work requested is not included in the Services defined in Exhibit "A," the CONSULTANT must receive written authorization prior to proceeding with the additional work. All work provided without this authorization is done at the CONSULTANT's risk and cost.

6. **Termination and Cancellation.**

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6.1 Either party may terminate this Agreement for cause upon fourteen (14) days written notice to the other party.

6.2 The DISTRICT may terminate any or all parts of this Agreement without cause upon seven (7) days written notice to the CONSULTANT.

6.3 The DISTRICT may cancel this Agreement for a conflict of interest under Arizona Revised Statutes Section 38-511.

6.4 The DISTRICT may terminate this Agreement without further obligations if insufficient appropriated funds are available to assure full performance in subsequent fiscal year of the DISTRICT. The DISTRICT shall advise CONSULTANT of the non-appropriation of funds at the earliest opportunity.

6.5 If either party terminates this Agreement, the DISTRICT shall have no further obligations other than payment for Services already rendered and for reimbursement of expenses incurred through the date of the termination notice, exclusive of any offsets, damages or claims. Upon receipt of a termination notice, CONSULTANT shall immediately discontinue performance of the Services so terminated. CONSULTANT shall, thereafter, do only such work as may be necessary to preserve and to protect the Services in progress, and CONSULTANT shall take all reasonable steps to minimize costs. CONSULTANT and the DISTRICT shall adjust payment for Services already completed or in process at the time the notice of termination is received in a fair and reasonable manner, but compensation shall exclude any allowance for unperformed services or anticipated profits.

7. Suspension. DISTRICT may, by written notice, direct CONSULTANT to suspend performance on all or any part of the Services for a period of time determined by DISTRICT to be necessary or desirable for its convenience. If suspension is not due to the fault or negligence of CONSULTANT, compensation shall be adjusted on the basis of additional direct costs incurred by CONSULTANT, if any, to actually perform the suspended services and the time of performance for the Services shall be extended by the actual duration of the suspension. This Agreement shall be modified in writing accordingly; provided, however, that any claim by CONSULTANT for a price adjustment must be supported by appropriate cost documentation asserted within ten (10) days from the date a start order is given to CONSULTANT for resumption of the Services.

8. Force Majeure. If either party, because of an event beyond its control, including an act of God, is delayed in performing its duties under this Agreement, that party may have its time of performance extended for a period equal to the time performance is delayed by such event. The affected party shall promptly notify the other party in writing of any delay and shall use its best efforts to mitigate and remedy the effect of the delay.

9. Independent Contractor.

9.1 For all purposes under the terms of this Agreement, CONSULTANT shall be an independent contractor, and not an officer, employee or agent of the DISTRICT. The DISTRICT shall provide no employee benefits, including but not limited to Worker's Compensation coverage, regularly afforded to staff, faculty, administrative or professional employees. In performing the Services, CONSULTANT shall determine its necessary hours of work. CONSULTANT shall provide whatever tools, equipment, vehicles and supplies CONSULTANT may determine to be necessary in performance of the Services. CONSULTANT may establish offices in such location within or outside Arizona, as CONSULTANT may determine to be necessary for the performance of Services, and shall be responsible for all expenses of operation of its office, including expenses incurred in hiring employees and assistants to CONSULTANT.

9.2 The conduct and control of work under this Agreement lies solely with CONSULTANT, and the DISTRICT is interested only in final results to be achieved. The DISTRICT shall be permitted to retain other consultants performing the same or similar tasks, and CONSULTANT shall be permitted to provide services to other parties, consistent with CONSULTANT's obligation to complete the Services undertaken pursuant to the terms of this Agreement. The duty of the CONSULTANT to perform services is neither satisfied nor affected in any respect by the presence on the site of any other agent, consultant, or employee of the DISTRICT.

5 **10. Ownership of Documents.** The DISTRICT acknowledges the CONSULTANT'S reports, drawings and other work products as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall be provided to and become the sole property of the DISTRICT upon completion of the work and payment in full of all monies due to the CONSULTANT. The DISTRICT may utilize the drawings and specifications with respect to construction, maintenance, use, occupancy, repair and modification of the project. The DISTRICT may utilize the drawings and specifications with respect to another project or for his own purposes if the DISTRICT agrees to hold the CONSULTANT harmless and indemnify CONSULTANT from any claim, liability or cost arising out of DISTRICT's subsequent improper or unauthorized use of said drawings and specifications. CONSULTANT shall not release such work product or other information obtained or produced pursuant to this Agreement without the prior written consent of the DISTRICT.

At the completion of any projects, the Consultant shall provide the DISTRICT electronic copies of all drawings and specifications produced for the Work.

15 **11. Insurance.**

11.1 Without limiting any of its obligations or liabilities, the Consultant, at Consultant's own expense, shall purchase and maintain for the duration of this Agreement the minimum insurance coverage specified in this Paragraph 11 against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Consultant, its agents, representatives, employees, or subconsultants. The insurance shall be with companies duly licensed to do business in the State of Arizona or, if not licensed in Arizona, approved by the DISTRICT, with policies and forms satisfactory to the DISTRICT. Each insurer shall have a current Best rating of not less than A:VII. Use of alternative insurers requires prior approval of the DISTRICT. Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates of insurance and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the insurance requirements stated in this Paragraph 11.

11.2 The insurance policies, except Workers' Compensation and Professional Liability, required by this Agreement, shall name the MCCCDC, its agents, representatives, officers, directors, officials, employees, volunteers, and consultants as additional insureds; shall specify that the CONSULTANT'S insurance shall be primary insurance; and that any insurance coverage carried by the DISTRICT or its employees shall be excess coverage, and not contributory coverage to that provided by the CONSULTANT. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the DISTRICT.

11.3 CONSULTANT shall maintain insurance policies required in this Paragraph 11 in full force and effect until all Services required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. If CONSULTANT fails to do so, DISTRICT may immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums. CONSULTANT shall repay all monies upon demand from the DISTRICT, or the DISTRICT may offset the cost of the premiums against any monies due to the CONSULTANT from the DISTRICT. Costs for coverages maintained by CONSULTANT in excess of those required shall not be charged to the DISTRICT without prior written approval of the DISTRICT.

11.4 The policies may provide coverage that contains deductible or self-insured retentions. Such deductible or self insured retentions shall not be applicable to the coverage provided to the DISTRICT under such policies. CONSULTANT shall be solely responsible for deductibles or self-insured retentions and the DISTRICT, at its option, may require the CONSULTANT to secure the payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit. (However, evidence of qualified self-insured status will satisfy this Agreement.) The insurance policies that contain deductibles or self-insured retentions in excess of \$100,000 per occurrence shall not be acceptable without the prior approval of the DISTRICT.

11.5 The DISTRICT reserves the right to request and to receive, within 10 working days, complete certified copies of any or all of the policies or endorsements. The DISTRICT shall not be obligated, however, to review same or to advise CONSULTANT of any deficiencies in such policies and endorsements, and such receipt shall

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not relieve CONSULTANT from, or be deemed waiver of, the DISTRICT's right to insist on, strict fulfillment of CONSULTANT'S obligations under this Agreement.

11.6 At the execution of this Agreement, CONSULTANT shall furnish the DISTRICT with certificates of Insurance, or formal endorsements as required by the Paragraph 11, issued by CONSULTANT'S insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Agreement are in full force and effect. Such certificates and endorsements shall identify the Agreement and Project. Each insurance policy required by this Agreement shall be endorsed to state the coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the DISTRICT. Such notice shall be sent directly to:

Len Wonsey, Purchasing
Maricopa County Community College DISTRICT
2411 W. 14th Street
Tempe, AZ 85281

11.7 The certificates or endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the DISTRICT before work commences. In the event any insurance policy(ies) required by this Agreement is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the CONSULTANT'S Services and as evidenced by annual certificates of insurance. If a policy expires during the life of the Agreement, a renewal certificate must be sent to the DISTRICT thirty (30) days prior to the expiration date.

11.8 Required Coverage.

11.8.1 Consultant shall maintain Commercial General Liability insurance with an unimpaired limit of liability of not less than \$1,000,000 for each occurrence with a \$1,000,000 Products and Completed Operations Aggregate and a \$1,000,000 General Aggregate Limit. The general aggregate limit shall apply separately to the Work under this Agreement or the general aggregate shall be twice the required per occurrence limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations, and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement, which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 000211093 or any replacement thereof. The coverage shall not exclude XCU.

11.8.2 Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision that would serve to limit third party over claims.

11.8.3 CONSULTANT shall maintain Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the CONSULTANT'S owned, hired, and non-owned vehicles assigned to or used in performance of the CONSULTANT'S Work. Coverage will be at least as broad as coverage code 1, "any auto." Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials, or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident combined single limits for bodily injury and property damage shall apply.

11.8.4 The CONSULTANT shall carry Workers' Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction of CONSULTANT'S employees engaged in the performance of the Work, and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit. In case any work is subcontracted, the CONSULTANT will require the subconsultant to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of the CONSULTANT.

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11.8.5 The CONSULTANT shall maintain Professional Liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement and any deductible not to exceed \$50,000 each claim.

5 11.8.6 Required coverages may be modified by an amendment to this Agreement.

10 **12. Indemnification.** To the fullest extent permitted by law, CONSULTANT shall defend, indemnify, and hold harmless the DISTRICT, and its agents, officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses (including but not limited to attorney fees and court costs) arising from the acts, errors, mistakes, omissions, work or service of the CONSULTANT, its agents, employees, or any tier of CONSULTANT's subcontractors in the performance of this Agreement. The requirements in Paragraph 11 will not be construed as limiting the scope of this indemnification. In no case shall the CONSULTANT be liable for claims, expenses, loss or damage to the extent of any tortious acts or omissions of the DISTRICT, and any of their contractors, agents, officers or employees arising from torts or a breach of this Agreement by the DISTRICT.

15 **13. Attorney's Fees.** The prevailing party in any litigation arising out of this Agreement shall be entitled to recover attorneys fees and other reasonable, substantiated costs associated with the litigation from the other party based upon the reasonable hourly rate for attorneys with similar experience in the community, provided however this Paragraph shall not apply to administrative dispute resolution proceedings. Such costs awarded shall be determined by the court and not the jury.

20 **14. Conflict of Interest.** Per the Maricopa Community College DISTRICT Purchasing Procedures Manual, Section 401. The CONSULTANT warrants that neither it nor its sub-consultants may receive any direct or indirect benefit from any organizations or firms, or by purchasing any products or services from any organizations or firms, specified in the Contract Documents for Construction.

25 **15. Records Retention and Audit.** Pursuant to A.R.S. §35-214, the CONSULTANT shall retain, and require all subconsultants to retain, for inspection and audit all books, accounts, reports, files computer data and other records (collectively, records) relating to this Agreement for five (5) years after expiration of this Agreement. Legible copies or the originals of the records shall be produced at a place designated by the OWNER or the DISTRICT, upon reasonable notice to the CONSULTANT.

30 **16. No Waiver.** The failure of DISTRICT to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies provided by this Agreement, or DISTRICT's delay in the exercise of any such rights or remedies shall not release CONSULTANT from any of its responsibilities or obligations imposed by law or by this Agreement and shall not be deemed a waiver of any right of DISTRICT to insist upon strict performance of this Agreement.

35 **17. Year 2000 Certification.** CONSULTANT warrants that the performance of the Services it provides under this Agreement and of the products and equipment it specifies, if applicable, shall not be diminished or affected by the processing of date/time data from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations.

40 **18. Legal Worker Requirements:** As mandated by Arizona Revised Statutes § 41-4401, MCCC is prohibited from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes §23-214-A, which requires that employers verify the employment eligibility of their employees through the Federal E-verify system. An "employer" is an independent contractor, a self-employed person, the State of Arizona or any of its political subdivisions, or any individual or type of organization that transacts business in the State of Arizona, that has a license issued by an agency in the State and that employs one or more employees in the State. (See A.R.S. §23-211-4.) Therefore, in signing or performing any contract for MCCC, the Contractor fully understands that:

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- A. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and with A.R.S. § 23-214-A;
 - B. Any breach of that warranty is material and is subject to penalties up to and including immediate
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- 55 termination of the contract; and

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C. MCCCCD or its designee is authorized by law to randomly inspect the records relating to an employee of the Contractor or any of its subcontractors who works on the contract to ensure compliance with the warranty made in Paragraph A above.

5 **19. Sudan and Iran Requirements:** Pursuant to Arizona Revised Statutes § 35-391.06(A) and § 35-393.06(B), every Consultant must certify that it does not have “scrutinized” business operations in either Sudan or Iran, as that term is defined in Arizona Revised Statutes § 35-391.(15) and § 35-393(12) respectively.

10 **20. Applicable Law.** This Agreement shall be governed by Arizona law.

21. Disputes

15 a. Any claim or dispute between the Consultant and the Owner arising out of or relating to this Contract, which has not been resolved in a manner acceptable to both the Consultant and the Owner shall be resolved pursuant to the Maricopa County Community College District Purchasing Procedures Manual, Section 902, “Contract Claims and Dispute Resolution” (<http://www.maricopa.edu/purchasing/pmanual/902.htm>).

20 b. The parties agree that the Claims Procedures and Legal Remedies set forth or identified in this Article shall be the exclusive means for resolving disputes arising under the Contract. Consultant acknowledges and understands that it must follow this process before instituting any judicial proceeding and that all opinions and decisions reached prior to any suit, along with their reasoning, shall become part of the legal record of any judicial proceeding.

25 c. No suit or action shall be commenced hereunder by any claimant other than in the Arizona Superior Court for Maricopa County. The procedures described in this Paragraph for resolving claims shall be exhausted before any lawsuit may be filed.

30 d. Nothing in this Contract shall be construed to waive the requirements of Arizona Revised Statutes Sections 12-820 (ACTIONS AGAINST PUBLIC ENTITIES OR PUBLIC EMPLOYEES) et seq. The Consultant shall file any notice of claim under this Contract within the time limits and in the manner specified in Arizona Revised Statutes Section 12-821.01 (AUTHORIZATION OF CLAIM AGAINST PUBLIC ENTITY OR PUBLIC EMPLOYEE).

35 e. Unless otherwise agreed in writing, the Consultant shall carry on the Work and maintain its progress during the resolution of any claim or controversy and the Owner shall continue to make payments that are due and owing to the Consultant, and not in dispute, in accordance with this Contract.

40 **22. Meanings of Terms.** Terms in this Agreement shall have the same meaning as those in A.I.A. Document A201, General Conditions of the Contract for Construction, 1997 Edition.

45 **23. Statutes of Limitations.** As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the Date of Substantial Completion of the Work, and as to any acts or failures to act occurring after the Date of Substantial Completion, not later than the date of issuance of the final Certificate for Payment unless the statute of limitations is tolled. However, the statute of limitations shall not be tolled if the nondefaulting party knew or, by the exercise of reasonable diligence, should have known of the act or failure to act.

50 **24. Design Standards.** Project design and construction documents shall comply with the Owner’s design standards available on their website:

- **MCCCCD Part I: Administrative and General Design Guidelines**
(http://www.maricopa.edu/facilitiesplanning/docs/PartI-MCCCCD_Design_Guidelines.pdf)
- **MCCCCD Part II: Learning Space Design Guidelines**

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http://www.maricopa.edu/facilitiesplanning/docs/PartII-Learning_Space_Design_Guidelines.pdf

- **MCCCD Part III: Operations and Maintenance Guidelines**
http://www.maricopa.edu/facilitiesplanning/docs/PartIII-MCCCD_Ops_and_Maint_Guidelines.pdf
- **FM Global Property Loss Prevention Data Sheet, Sheet 2-8N for modifications to NFPA 13 Fire Sprinklers, along with separate narrative guideline**
http://www.maricopa.edu/facilitiesplanning/docs/FM_Global_Standard.pdf
- **FM Global Supplemental Specification Information for Fire Sprinklers**
http://www.maricopa.edu/facilitiesplanning/docs/FM_Global_Guide.pdf
- **Support Space Design Guidelines Education Specification (edited as needed by the college for the specific project)**
http://www.maricopa.edu/facilitiesplanning/docs/support_space_guidelines.doc
- **Mechanical/Plumbing/Electrical Design and Construction Requirements**
http://www.maricopa.edu/facilitiesplanning/docs/Standard_MPE_spec.doc

THE MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

By: _____
Michael McIntier, CPPO, C.P.M.

Title: Director Strategic Business Support Services

Consultant/Firm:

By: _____

Title: _____

Correct Legal Name: _____

Identification No: _____

or

Social Security No: _____

Mailing Address: _____

City, State: _____

Zip Code: _____

Telephone: _____

Fax: _____

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AGREEMENT FOR CONSULTANT SERVICES

EXHIBIT A

5 **I. DESCRIPTION OF SERVICES:**

<> description of the work

10 <>This work will encompass multiple phases, including separate study/analysis/system selection and preliminary design, followed by completion of design and construction documents, bid phase assistance, construction administration services, close out and start-up assistance. The second phase of this work will be negotiated at the completion of the first phase and become an amendment to this contract for the first phase of the work. The contract amount, actual scope of work and any adjustment in contract term will be mutually adjusted as needed.

15 **II. FEES FOR SERVICES:**

The DISTRICT agrees to pay CONSULTANT, as consideration for the performance of the consulting services as set forth in the preceding paragraph, the sum not to exceed <> Dollars (\$<>.00), per the attached proposal dated <>, payable as follows:

20 Billings shall be submitted on a monthly basis for services performed to date. The fee schedule for such services is identified in the CONSULTANT's proposal. Billings shall be submitted to the college or DISTRICT Office authority which negotiated the work.

25 **III. REIMBURSEMENT FOR EXPENSES:**

The DISTRICT agrees to reimburse CONSULTANT up to a maximum of \$ <> for reimbursable expenses as follows:

30 Prior approval is required for any individual expenses in excess of \$250. Each request for reimbursement must be itemized and accompanied by receipts.

35 (word:fpdserver/masterforms/consultant contracts/
Shortform Agreement for single, small project)
7/27/05

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