

COAST COMMUNITY COLLEGE DISTRICT

ANNUAL AGREEMENT FOR CONTRACTOR SERVICES

This ANNUAL AGREEMENT FOR CONTRACTOR SERVICES (“AGREEMENT”) is made by and between COAST COMMUNITY COLLEGE DISTRICT, a public educational agency, hereinafter referred to as DISTRICT, and _____, a _____, hereinafter referred to as CONTRACTOR. DISTRICT and CONTRACTOR are referred to herein individually as “PARTY and collectively as the “PARTIES.”

This AGREEMENT is made in the County of Orange, State of California, shall commence on the ___ day of _____, 20___, or on the date of signature by the DISTRICT, whichever shall later occur. This AGREEMENT shall expire on June 30, 20___.

CONTRACTOR INFORMATION:

Firm/Name: _____
Address: _____

Telephone: _____
Fax: _____ E-Mail: _____
CONTRACTOR License No.: _____ / (type) _____

WHEREAS, DISTRICT desires to obtain contractor services for: _____
_____ (“PROJECT”) or for on- call services.

WHEREAS, CONTRACTOR warrants and represents to DISTRICT that CONTRACTOR is properly licensed, and has the experience, expertise and resources to provide, and successfully complete the services required hereby and will provide the same in conformity with the laws of the State of California.

NOW, THEREFORE, the PARTIES agree as follows:

1. CONTRACTOR shall furnish for each project within the DISTRICT a proposal detailing labor and material costs (see bid limits herein). As required by California Labor Code Section 1773, CONTRACTOR's or subcontractors shall not pay less than the specified prevailing rates of wages to all workers employed in the execution of this work.
2. The Certificate of Insurance and Endorsement are to meet the requirements of Article III herein. This AGREEMENT shall not be deemed in force and effect unless and until CONTRACTOR provides the DISTRICT with the certificate(s) and endorsements as required herein.
3. Payment Schedule: Payment to be made upon satisfactory completion of all the work called for in the Agreement/Proposal documents and receipt of correct invoices in duplicate with necessary backup. No payment will be made for work or materials unless the CONTRACTOR is properly licensed and insured during the course of project.

4. Inspection and acceptance of work shall be performed by one of the following individuals: CCC: Dave Cant • OCC: Frank Fonseca • GWC: Joe Dowling • District: Jerry Marchbank • Other: DSA Inspector or Campus Manager.

5. AGREEMENT includes the Terms & Conditions included herein and as may be attached hereto. By executing this AGREEMENT, CONTRACTOR agrees to comply with such Terms & Conditions.

6. AGREEMENT includes all documents as indicated below:

- a. Project Specific Scope of Work Statement/Proposal is required for each project
- b. Workers' Compensation insurance: certificate of insurance evidencing coverage
- c. Insurance: DISTRICT to be named as additional insured using the following language:

“The Coast Community College District, its Colleges, its Board of Trustees, agents, representatives, and employees are added as additional insureds.”

- d. Other – MSDS Sheets; Operation Manuals; Product Registration Form; etc.

7. DISTRICT shall retain sole discretion to terminate this AGREEMENT upon providing written notice to CONTRACTOR. CONTRACTOR shall be compensated for services performed before the notice of termination or suspension was given and shall not be compensated for any unearned fees, costs or anticipated profits on non-performed services.

BID LIMITS: Public Contract Code 20651 allows for services up to \$78,500 (2010 limit) a service amount which is adjusted annually (in January) for the purchase of equipment, materials or supplies; services, except construction services; repairs that are routine, recurring and usual work for the preservation or protection of public property; minor repainting; resurfacing streets or parking areas at less than one inch; and landscape maintenance including servicing of irrigation and sprinkler systems. The \$15,000 bid limit applies to construction, reconstruction, erection, alteration, renovation, improvement, and demolition work.

EXAMPLES: Minor painting--less than a whole exterior or interior of a building or structure would be \$78,500 limit; whole building would be \$15,000 limit. Repair to a portion of a roof would be subject to the \$78,500 limit but an entire roof would be the \$15,000 limit. Replacement of a wing or room of carpet would be the \$78,500.00 limit; replacement of an entire building's carpet would be the \$15,000 limit. Questions regarding bid limits should be referred to John Eriksen, Director of Purchasing (714/438-4680) and/or Jerry Marchbank, Director, Facilities and Planning (714/438-4673).

All contracts over \$10,000 require the campus to obtain a minimum of three (3) proposals. The DISTRICT will provide notification to CFCE of each contract for services exceeding \$15,000 per fiscal year.

CHANGE ORDERS: Change orders increasing the total cost for services beyond the Bid Limit will not be processed. All change orders must be in writing, and must be previously board-approved and executed by DISTRICT.

TERMS & CONDITIONS

ARTICLE I – CONTRACTOR SERVICES AND RESPONSIBILITIES

1. **EQUIPMENT AND LABOR.** CONTRACTOR shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the service herein described. The service shall be performed at such times and places as directed by and subject to the written approval of the authorized DISTRICT representative indicated on page 1 of this AGREEMENT. All of said services are to be performed and materials to be furnished shall be completed in a good workmanlike manner in strict accordance with the plans, drawings, and/or specifications and provisions of this AGREEMENT.

2. **SUBCONTRACTORS.** Subcontractors, if any, engaged by the CONTRACTOR for the Services shall be subject to the written approval of the DISTRICT. CONTRACTOR shall be held fully responsible for all the work and operations of subcontractors and shall require them to maintain all insurance as outlined on page 1 of this AGREEMENT and Article III of these terms and conditions. Subcontractors shall provide the DISTRICT with a Certificate of Insurance and Endorsement naming the DISTRICT and CONTRACTOR as additional insured on said policy or policies. This AGREEMENT shall not be deemed in force and effect unless and until CONTRACTOR provides the DISTRICT with the Certificate(s) and Endorsements as provided herein.

3. **SAFETY AND SECURITY.** It shall be the responsibility of the CONTRACTOR to ascertain from the DISTRICT and to abide by the rules and regulations pertaining to safety, security, and driving on college grounds.

4. **GUARANTEES.** CONTRACTOR shall guarantee all labor and materials used in the performance of this AGREEMENT for the period of one year from the date of acceptance of the work by the DISTRICT. CONTRACTOR shall repair or replace any and all such work that is defective in workmanship and/or materials without expense to DISTRICT.

5. **EMPLOYEES.**

a. CONTRACTOR shall at all times enforce strict discipline and good order among CONTRACTOR's/subcontractor's employees. CONTRACTOR/subcontractor shall not employ any person not fit for or skilled in the work assigned.

b. DISTRICT reserves the right to require CONTRACTOR to remove any person in CONTRACTOR's/subcontractor's employ at any time for any reason and CONTRACTOR shall immediately comply with DISTRICT's request.

6. **SUBSTITUTIONS.** No substitutions of materials specified shall be made without the prior written approval of the DISTRICT.

7. **CONTRACTOR SUPERVISION.** CONTRACTOR shall provide competent supervision of CONTRACTOR's and subcontractor's employees. Supervision shall include the use of equipment and quality of workmanship.

8. PROTECTION OF WORK AND PROPERTY. CONTRACTOR shall, at all times, erect and properly maintain all necessary safeguards, signs, barriers, lights and watchmen for protection of workers, DISTRICT staff, students, and the public. CONTRACTOR shall post danger signs warning against hazards created in the course of construction. In an emergency that is life threatening the CONTRACTOR, without special instruction or authorization from DISTRICT, is permitted to act at CONTRACTOR's discretion to prevent loss of life or injury and/or property loss.

9. ACCESS TO WORK SITE. CONTRACTOR shall provide safe and proper access for DISTRICT representatives to the work site at all times.

10. COMPLIANCE WITH LAW. CONTRACTOR shall comply with all applicable federal, state, county, and city statutes, regulations and ordinances including, but not limited, to the Immigration Reform and Control Act of 1986 and shall maintain all necessary licenses and permits. CONTRACTOR represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age, or disability.

11. LABOR CODE. CONTRACTOR shall comply with the applicable general prevailing wage rates. Copies of the prevailing rate of per diem wages are on file in the DISTRICT's Physical Facilities Office, 1370 Adams Avenue, Costa Mesa, CA 92626.

12. CLEAN-UP. Debris shall be removed from the premises and disposed of appropriately by the CONTRACTOR. Job site shall be free of debris at all times when work is not being performed.

13. TIMELY PERFORMANCE. CONTRACTOR shall perform services in a prompt and timely manner and shall commence performance upon receipt of written notice to proceed from DISTRICT.

14. MODIFICATION OF DUTIES. The duties and responsibilities and limitation of authority of CONTRACTOR shall not be modified or extended without written agreement of DISTRICT.

15. OCCUPANCY. DISTRICT reserves the right to occupy buildings at any time before AGREEMENT completion, and such occupancy shall not constitute final acceptance of any part of work covered by this AGREEMENT, nor shall such occupancy extend the date specified for completion of the work.

ARTICLE II – TERM, TERMINATION, SUSPENSION OR ABANDONMENT

1. DISTRICT shall have the right to suspend the PROJECT at any time at its sole discretion. If the PROJECT is suspended by DISTRICT for more than ninety consecutive days, CONTRACTOR shall be compensated for services performed prior to notice of such suspension and shall not be compensated for any unearned fees or costs.

2. This AGREEMENT may be terminated by either PARTY upon not less than seven days written notice should the other PARTY fail substantially to perform in accordance with the terms of this AGREEMENT through no fault of the PARTY initiating the termination.

3. DISTRICT shall also have the right to terminate this AGREEMENT at any time in its sole discretion, and without cause, upon not less than seven days written notice to CONTRACTOR. In that event, CONTRACTOR shall be compensated for services performed prior to notice of termination and shall not be compensated for any unearned fees, costs, or anticipated profits on non-performed services. CONTRACTOR shall:

- a. Cease operations as directed by DISTRICT in the notice;
- b. Take any actions necessary, or that DISTRICT may direct, for the protection and preservation of the work; and
- c. Not terminate any insurance provisions required by the Project Documents.

4. In the event of termination due to the fault of CONTRACTOR, CONTRACTOR shall not be entitled to any unearned fees or costs and shall be liable for damages suffered by DISTRICT due to CONTRACTOR's failure to perform as provided in the AGREEMENT.

5. In the event of AGREEMENT termination by either PARTY for any reason, DISTRICT reserves the right to receive, and CONTRACTOR shall promptly provide to DISTRICT all Drawings, Specifications, models, and other documents and materials prepared or received by CONTRACTOR or others for the PROJECT. In the event of termination, any dispute regarding the amount to be paid shall not alter DISTRICT's unequivocal right to receive and use any such documents or materials.

ARTICLE III – INDEMNITY AND INSURANCE

1. CONTRACTOR agrees, to the fullest extent permitted by the law, to indemnify and hold harmless DISTRICT, its trustees, agents and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by CONTRACTOR's negligent, reckless, or intentionally improper performance of professional services under this AGREEMENT or acts or omissions in connection with the PROJECT, or any actions of CONTRACTOR's consultants or anyone for whom the CONTRACTOR is legally liable.

2. The coverage of such indemnification shall include, without limitation, reasonable attorneys' fees and court costs incurred by DISTRICT with regard thereto. Said indemnity is intended to apply during the period of this AGREEMENT of CONTRACTOR'S performance and shall survive the expiration or termination of this AGREEMENT until such time as any action against DISTRICT on account of any matter covered by such waiver or indemnity is barred by the applicable Statute of Limitations.

3. The obligation to defend shall arise regardless of any claim or assertion that DISTRICT caused or contributed to the losses. CONTRACTOR's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for DISTRICT shall be reimbursed by DISTRICT except to the extent such defense costs arise, under principles of comparative fault, from CONTRACTOR's (a) negligent, reckless, or intentional acts or omissions; (b) breach of any of the provisions of this AGREEMENT; or (c) willful misconduct.

4. Review, approval, or acceptance of CONTRACTOR's work, whether by DISTRICT or others, shall not relieve CONTRACTOR from responsibility for errors and omissions in CONTRACTOR's work.

5. Nothing in this AGREEMENT, including the provisions of this Article, shall constitute a waiver or limitation of any rights which DISTRICT may have under applicable law, including without limitation, the right to implied indemnity.

6. CONTRACTOR shall purchase and maintain during the term of this AGREEMENT, with insurance companies duly licensed by the State of California with a rating by Best's Insurance Rating Service of not less than AVII, policies of insurance which will protect CONTRACTOR and DISTRICT from claims which may arise out of or result from CONTRACTOR's actions or inactions relating to this AGREEMENT or PROJECT, whether by CONTRACTOR or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. Commercial bodily injury and property damage liability insurance in the combined single limit of not less than \$1,000,000.00 for each occurrence for personal injury and/or death and \$250,000.00 as to property damage including, but not limited to, personal injury liability, broad form property damage liability, blanket contractual liability, and products liability, covering the activities of CONTRACTOR under this AGREEMENT, and shall provide DISTRICT with a Certificate of Insurance and Additional Insured Endorsement evidencing such policies. The insurance policies shall contain covenants by the issuing company that the policies shall not be cancelled without thirty days' prior written notice to DISTRICT. DISTRICT and DISTRICT'S Board of Trustees, shall be named as additional insureds under such policy of insurance to be maintained pursuant to this section, and such policy shall contain a cross-liability endorsement.

b. Worker's Compensation and Employers' Liability Insurance in the amounts required by law covering all personnel employed on the premises during the term of this AGREEMENT whether said personnel are employed by CONTRACTOR or supplied by persons or entities other than DISTRICT. CONTRACTOR shall maintain during the term of this AGREEMENT, Workers' Compensation insurance with an insurance company duly licensed and admitted by the State of California with a rating by Best's Insurance Rating Service of not less than AVII.

c. Comprehensive General and Auto Liability Insurance with insurance company duly licensed and admitted by the State of California with rating by Best's Insurance Rating Service of not less than AVII. Said insurance shall have limits of not less than \$1,000,000 combined single limit, bodily injury, and property damage liability per occurrence with no annual aggregate limits, including:

- 1) Owned, Non-owned and Hired Vehicles
- 2) Blanket Contractual
- 3) Broad Form Property Damage
- 4) Products/Completed Operations
- 5) Personal Injury

d. Each policy of insurance required in a., b., or c. (with the exception of Worker's Compensation) shall name DISTRICT and its trustees, agents, and employees as additional insureds;

shall state that, with respect to the operations of CONTRACTOR hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributing with such primary insurance, shall state that not less than thirty days' written notice shall be given to DISTRICT prior to cancellation, and shall waive all rights of subrogation against DISTRICT and its trustees, agents, and employees.

7. CONTRACTOR shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONTRACTOR shall deliver to DISTRICT certificates of insurance and additional insured endorsements as evidence of compliance with the requirements herein, which are to be attached hereto as an integral part of this AGREEMENT or this AGREEMENT will automatically be cancelled. In the event CONTRACTOR fails to secure or maintain any policy of insurance required, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONTRACTOR and in such event CONTRACTOR shall reimburse DISTRICT upon demand for the cost thereof.

8. DISTRICT's exercise of any of its rights or remedies prescribed in this AGREEMENT shall not relieve CONTRACTOR from responsibility for damages or other losses incurred or to be incurred by DISTRICT as a result of CONTRACTOR's breach of its obligations under this AGREEMENT.

ARTICLE IV – ALTERNATIVE DISPUTE RESOLUTION

Disputes arising from this AGREEMENT, or related in any manner to the AGREEMENT, shall be resolved as follows:

1. In the event of any dispute, claim, question, or disagreement arising out of or relating to this AGREEMENT, prior to initiating arbitration or any other legal action and as a condition precedent to being entitled to file such legal action or demand for arbitration, the PARTIES hereto shall use their best good faith efforts to settle such disputes, claims, questions, or disagreements, consulting, and negotiating with each other in good faith and recognizing their mutual interests in attempting to reach a just and equitable solution satisfactory to both PARTIES.

2. In the event that the PARTIES are unable to resolve their dispute through the meet and confer procedure provided for in paragraph 1, any dispute arising under or relating to this AGREEMENT, whether based on contract, tort, statute, or other legal or equitable theory, will be submitted to arbitration in the County of Orange, State of California before a retired California Superior Court Judge or retired California Appellate Court or Supreme Court Justice or before a retired Federal Court Judge or Justice. If the PARTIES are unable to agree as to an arbitrator, the arbitration shall be submitted before the Judicial Arbitration and Mediation Services, Inc. ("JAMS") or Judicate West or the American Arbitration Association ("AAA"). The PARTIES may agree on an arbitrator from the selected entity's panel. If they are unable to agree, the selected entity will provide a list of three available arbitrators and each PARTY may strike one. The arbitration tribunal shall select the arbitrator from the remaining names. The PARTIES waive their rights to a jury trial. The arbitration shall be held in accordance with the rules of the selected entity and California substantive law shall apply. The arbitrator shall award costs and attorneys' fees to the prevailing PARTY. The PARTIES shall be entitled to only the following limited discovery:

- a. Each PARTY shall exchange all documents relevant to the subject matter of the dispute.
- b. Each PARTY shall be entitled to one deposition limited to four hours.
- c. Each PARTY may serve one set of interrogatories limited to 15 interrogatories, including subparts.
- d. Each PARTY may make application to the arbitrator to order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or as such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses at the hearing to allow the deposition to be taken.
- e. Each PARTY shall advance one-half of the cost of the arbitration proceedings, including any administrative costs and arbitrator expenses subject to being reimbursed by an award of the arbitrator of costs.

3. Concurrent disputes under this AGREEMENT shall be consolidated into a single arbitration unless the PARTIES otherwise agree in writing. No hearing shall be held prior to final completion of the PROJECT unless DISTRICT and CONTRACTOR otherwise agree in writing.

4. Any arbitration award shall be subject to confirmation, vacation or correction under the procedures and on the grounds specified in the California Code of Civil Procedure, including, without limitation, Section 1296.

ARTICLE V – MISCELLANEOUS PROVISIONS

1. This AGREEMENT shall be interpreted and governed by the laws of the State of California. If any action is brought arising out of this AGREEMENT, including but not limited to any claims for breach, interpretation, cancellation, or specific performance of the same or any tort claims relating thereto, said action shall be brought in the appropriate tribunal in Orange County, California.

2. An inducement to DISTRICT for entering into this AGREEMENT is the professional reputation and competence of CONTRACTOR and its employees. Neither this AGREEMENT nor any interest therein may be assigned by CONTRACTOR without the prior written consent of DISTRICT, which consent may be withheld by District in its sole and absolute discretion. Any attempt by CONTRACTOR to assign this AGREEMENT shall be void and a material breach of this AGREEMENT and DISTRICT may immediately terminate this AGREEMENT.

3. CONTRACTOR warrants to DISTRICT that it is not now, nor has it or any of its officers been or five years preceding involved in arbitration or litigation concerning CONTRACTOR's professional performance or the furnishing of materials or services relating thereto.

4. DISTRICT and CONTRACTOR, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other PARTY to this AGREEMENT and to the partners, successors,

assigns and legal representatives of such other PARTY with respect to all covenants of this AGREEMENT.

5. This AGREEMENT represents the entire and integrated agreement between DISTRICT and CONTRACTOR and supersedes all prior negotiations, representations, or agreements, either written or oral. This AGREEMENT may be amended only by written instrument signed by both DISTRICT and CONTRACTOR and approved by DISTRICT's Board of Trustees.

6. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either DISTRICT or CONTRACTOR.

7. Time is of the essence for this AGREEMENT.

8. Notwithstanding anything to the contrary, to the extent allowed by law, DISTRICT shall not be liable for any special, indirect, exemplary, punitive, consequential, or incidental damages, including, without limitation, lost revenues, anticipated revenues, or profits relating to the same arising from any claim relating directly or indirectly to this AGREEMENT regardless of whether a claim for such damages is based on warranty, contract, or tort (including, without limitation, negligence or strict liability) even if the PARTIES are advised of the likelihood or possibility of the same.

9. CONTRACTOR's sole and exclusive remedy in the event CONTRACTOR makes any claim for breach of this AGREEMENT or seeks damages under any theory of law whether based on warranty, contract or tort, including without limitation, negligence or strict liability, shall be against DISTRICT and not its trustees, agents, or employees. No DISTRICT trustee, agent, or employee shall be sued or named as a PARTY in any such suit or action and no judgment shall be taken against any trustee, agent, or employee. No writ of execution will be levied against the assets of any trustee, agent, or employee of DISTRICT pursuant to the terms of this AGREEMENT. The covenant and agreement contained in this section are enforceable by DISTRICT's trustees, agents, and employees.

10. CONTRACTOR, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONTRACTOR understands and agrees that CONTRACTOR and all of CONTRACTOR's 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 CONTRACTOR's employees or agents as they relate to the services to be provided under this AGREEMENT. CONTRACTOR shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes for the respective CONTRACTOR's employees.

11. CONTRACTOR CHANGES. No changes or alterations to this AGREEMENT shall be made without a written request from CONTRACTOR and specific prior written approval by the DISTRICT.

12. FORCE MAJEURE CLAUSE. The PARTIES to this AGREEMENT shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, lock-out, terrorism, commandeering of materials,

products, plants, or facilities by the government. Satisfactory evidence shall be presented to the DISTRICT or CONTRACTOR to establish that the non-performance is not due to the fault or neglect of the PARTY not performing.

13. PAYMENT. Unless otherwise specified, CONTRACTOR shall submit invoices in duplicate for materials delivered or services performed under this AGREEMENT. DISTRICT shall make payment for materials, supplies, or other services furnished under this AGREEMENT within a reasonable and proper time after acceptance and approval thereof by the authorized DISTRICT representative.

14. This AGREEMENT shall be binding on and inure to the benefit of the successors and assigns of the PARTIES hereto.

ARTICLE VI -- NOTICES

Any notice or communication required or permitted to be given hereunder or by law shall be in writing and served personally, delivered by courier, or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other PARTY as follows:

TO CONTRACTOR:

Attn: _____

TO DISTRICT:

Coast Community College District
Attn: Director, District Risk Services
1370 Adams Avenue
Costa Mesa, CA 92626

With a copy to:

Coast Community College District
Attn: Director, Facilities and Planning
1370 Adams Avenue
Costa Mesa, CA 92626

Each PARTY shall make a reasonable, good faith effort to ensure that it will accept or receive notices that are given in accordance with this paragraph. A PARTY may change its address for purposes of this paragraph by giving the other PARTY written notice of a new address in the manner set forth above.

The PARTY signing for the CONTRACTOR affirms that they have the legal authority to enter into this AGREEMENT on behalf of the CONTRACTOR, and has been duly authorized to sign this AGREEMENT. This AGREEMENT has been executed by:

CONTRACTOR

COAST COMMUNITY COLLEGE DISTRICT

Signature
Title: _____
Print Name: _____
Date: _____

President, Board of Trustees

Date: _____