**Instructions to Delta Staff Member:**

Complete all **blanks (\_\_\_\_)** as indicated, following **directions in red front prompts < >,** **then delete all directions and prompts in red font, including these instructions**.

**SAN JOAQUIN DELTA COMMUNITY COLLEGE DISTRICT**

**SERVICES AGREEMENT**

This Agreement (“**Agreement**”) for services is made and effective on **Date of Final Signature** the (“**Effective Date**”), between the San Joaquin Delta Community College District, a California Community College District (“**District**”), and (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_<insert Supplier’s full legal name>), (“**Supplier**”) (individually, a “**Party**,” and collectively, the “**Parties**”).

**1. Scope of Services.** Supplier will provide to District the services described in the *Scope of Services*, attached as **Exhibit A** and incorporated in this Agreement (the “**Services**”). Only the District’s Board of Trustees or Superintendent/President or their duly authorized representative may authorize any change or addition to the Scope of Services specified in **Exhibit A**.

**2. Term.** This Agreement will begin on the Effective Date and will terminate upon the full and satisfactory completion of the Services or as otherwise specified in **Exhibit A**, unless terminated sooner in accordance with Section 10 of this Agreement. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance. The total term of this Agreement, including any extensions thereto, may not exceed five years, pursuant to District Administrative Procedure 6340.

**3. Compensation.** For the full and satisfactory completion of the Services, District will pay Supplier in an amount not to exceed $(\_\_\_\_\_\_\_\_\_\_\_\_), without prior written authorization by District, pursuant to the terms set forth in **Exhibit B**, *Payment*, which is attached to and incorporated in this Agreement. Supplier’s compensation is intended to encompass all costs required for performing the Services, including overhead and indirect costs. Except as expressly provided in **Exhibit B**, Supplier will not be entitled to reimbursement for expenses it incurs to provide the Services.

 **3.1 Payment.** District will pay Supplier for Services satisfactorily provided during each calendar month within 30 days following District receipt and approval of a detailed invoice. The invoice must include, at a minimum:

**(a)** the Agreement number,

**(b)** the District Purchase Order number,

**(c)** a description of the specific Services provided,

**(d)** the name of the individual(s) providing the Services,

**(e)** the date(s) upon which the Services were provided,

**(f)** the time spent providing the Services,

**(g)** the amount due for the Services, and

**(h)** the basis for calculating the amount due.

 **3.2 Additional Services.** If the District requests related services beyond the Scope of Services described in **Exhibit A**, the Supplier will provide District a written estimate for the additional services (“**Additional Services**”). Supplier will not provide Additional Services until the Agreement has been amended pursuant to Section 14.7, below, and Supplier has received written authorization from the District to perform the Additional Services. Except to the extent otherwise specified in the amendment, all Additional Services will be subject to the same terms and conditions that apply to all other Services under this Agreement. Supplier will not be entitled to payment for Additional Services performed without District’s prior written authorization or for costs to correct Supplier’s errors or omissions in performing Services or Additional Services.

**4. Independent Contractor**.The Parties agree that Supplier will act as an independent contractor under this Agreement and Supplier will have exclusive control of its work and the manner in which the Services are performed, and will not be subject to control or direction by District other than acceptance of Work Product, as defined below, or enforcement of the terms of this Agreement. Supplier is not an employee of District and neither Supplier nor its employees or subcontractors are entitled to participate in any health, retirement, or similar employee benefits from the District. The Parties further agree that the Services provided by Supplier are outside the usual course of the District’s business, and Supplier represents that it is customarily engaged in an independently established trade, occupation or business of the same nature as the Services. Independent Contract Form must be completed, found at: <https://www.deltacollege.edu/campus-offices/administrative-services/purchasing/contracts-office>.

**5. Supplier’s Warranties and Certifications.**

**5.1** Supplier warrants that all Services provided under this Agreement will be performed in accordance with generally accepted professional practices and standards for Supplier’s profession in Northern California.

**5.2** Supplier warrants that all Services provided under this Agreement will be performed in accordance with applicable federal, state, and local laws and regulations.

**5.3** Supplier warrants that Supplier has no present interest, which would conflict in any manner with the performance of Services on the District’s behalf or operate in violation of any conflict of interest laws, rules, or regulations.

**5.4** Supplier certifies that no employee or agent who has a conviction record for a serious or violent felony will be assigned to perform Services under this Agreement that permit or require him or her to come in contact with students unless District has first received prior notice from Supplier and has granted written permission subject to specified conditions.

**6. Notice.** Any billing, or payment required by this Agreement must be made in writing, and sent to the other Party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF (or comparable) file to the accounts payable department. Any contract related notices send to the contracts office. Notice is effective upon delivery unless otherwise specified. Notice for each Party will be given as follows:

|  |  |
| --- | --- |
| **District:** | **Supplier:** |
| San Joaquin Delta Community College District | Name: |
| 5151 Pacific Avenue | Address: |
| Stockton, CA 95207 |  |
| Attn: Accounts PayableEmail: accountspayable@deltacollege.edu | Attn:Email: |
| Attn: Contracts OfficeEmail: [contracts@deltacollege.edu](file:///%5C%5Czipper%5Caccess%5Cpurchasing%5CPURCHASING%20PROJECT%202020%5Ccontracts%40deltacollege.edu) |  |

**7. Indemnity.** Subsection 7.1 is not applicable to this Agreement if Supplier’s Services are “design professional” services as that term is used and defined in Civil Code section 2782.8. Subsection 7.2 is applicable to this Agreement if Supplier’s Services are “design professional” services as that term used and defined in Civil Code section 2782.8.

**7.1** **General.** To the full extent permitted by law, Supplier will indemnify, defend with counsel acceptable to District, and hold harmless District, its governing body, officials, officers, agents, employees, and volunteers (collectively, “**District Indemnitees**”) from and against any and all liability, demands, loss, damage, claims, settlements, expenses, and costs (including, without limitation, attorney fees, expert witness fees, and costs and fees of litigation) (collectively, “**Liability**”) of every nature arising out of or in connection with Supplier’s acts or omissions with respect to this Agreement, except such Liability caused by the active negligence, sole negligence, or willful misconduct of any of the District Indemnitees. This indemnification obligation is not limited by any limitation on the amount or type of damages or compensation payable under Workers’ Compensation or other employee benefit acts, or by insurance coverage limits, and will survive the expiration or early termination of this Agreement.

**7.2** **Design Professional.** To the full extent permitted by law, but subject to applicable limitations, including the limitations of Civil Code sections 2782 and 2782.8, Supplier will indemnify, defend, and hold harmless District, its governing body, officials, officers, agents, employees, and volunteers (collectively, **District Indemnitees**”) from and against any and all liability, loss, damage, claims, settlements, expenses and costs (including, without limitation, attorney fees, expert witness fees, and costs and fees of litigation) (collectively, “**Liability**”) of every nature which arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of Supplier in the performance of this Agreement, except such Liability caused by the active negligence, sole negligence or willful misconduct of any of the District Indemnitees. This indemnification obligation is not limited by any limitation on the amount or type of damages or compensation payable under Workers’ Compensation or other employee benefit acts, or by insurance coverage limits, and will survive the expiration or early termination of this Agreement.

**8. Insurance.** Before providing any Services under this Agreement, Supplier is required to procure and provide proof of the insurance coverage required by this Section in the form of certificates and endorsements as well as register and submit their COI with PlantBids at: <https://www.planetbids.com/portal/portal.cfm?CompanyID=44364>. Each certificate of insurance must state that the coverage afforded by the policy or policies will not be reduced, cancelled or allowed to expire without at least 30 days written notice to District, unless due to nonpayment of premiums, in which case at least 10 days written notice will be made to District. The required insurance must cover the activities of Supplier and its employees or subcontractors relating to or arising from the performance of the Services, and must remain in full force and effect at all times during the term of the Agreement. All required insurance must be issued by an insurer licensed to do business in the State of California, and each such insurer must have an A.M. Best financial strength rating of “A” or better and a financial size rating of “IX” or better. If Supplier fails to provide any of the required coverage, District may, at its sole discretion, purchase such coverage at Supplier’s expense and deduct the cost from payments due to Supplier.

**8.1** **Minimum Coverage Requirements.** The following insurance policies and limits are required for this Agreement. District, reserves the right to require additional insurance based on the work or service being performed:

**(a) Commercial General Liability Insurance (“CGL”).** CGL insurance issued on an occurrence basis, including coverage of liability arising from Supplier’s acts or omissions in the performance of Services under this Agreement, with limits of at least $1,000,000 per occurrence, and $2,000,000 aggregate.

**(b) Automotive.** Commercial automotive liability coverage for owned, non-owned and hired vehicles must provide coverage of at least $1,000,000 combined single limit per accident for bodily injury, death, or property damage.

**(c) Workers’ Compensation Insurance and Employer’s Liability.** The policy must comply with the requirements of the California Workers’ Compensation Insurance and Safety Act, with limits of at least $1,000,000. If Supplier is self-insured, Supplier must provide its duly authorized Certificate of Permission to Self-Insure.

**(d) Professional Liability.** Coverage with limits of at least $1,000,000 per occurrence, and $2,000,000 aggregate and must include Errors and Omissions.

**8.2 Subrogation Waiver.** Each required policy must include an endorsement that the insurer agrees to waive any right of subrogation it may have against District or the District’s insurers.

**8.3** **Endorsements.** The CGL policy and the automotive liability policy must include the following endorsements:

**(a)** The District, including its governing body, officials, officers, employees, agents, volunteers and consultants (collectively, “**Additional Insured**”) must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Agreement.

**(b)** The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

**(c)** The insurance provided is primary and no insurance held or owned by District will be called upon to contribute to a loss.

**(d)** Any umbrella or excess insurance must contain or be endorsed to contain a provision that such coverage will also apply on a primary or non-contributory basis for the benefit of District before the District’s own insurance or self-insurance will be called upon to protect it as a named insured.

**9. Dispute Resolution.** In the event that any dispute arises between the Parties in relation to this Agreement, the Parties agree to meet face to face as soon as possible to engage in a good faith effort to resolve the matter informally. In the event that any dispute arises between the Parties in relation to this Agreement, and the dispute is not resolved by informal discussions, the Parties agree to submit the dispute to mediation.

**9.1 Mediation.** Either Party may give written notice to the other Party of a request to submit a dispute to mediation, and a mediation session must take place within 60 business days after the date that such notice is given, or sooner if reasonably practicable. The Parties will jointly appoint a mutually acceptable mediator. The Parties further agree to share equally the costs of the mediation, except costs incurred by each Party for representation by legal counsel. Good faith participation in mediation pursuant to this Section is a condition precedent to either Party commencing litigation in relation to the dispute.

**9.2 Claim Presentment.** Nothing in this Agreement will be construed as a waiver of any of the claim presentment requirements set forth in Government Code section 900 et seq.

**10. Early Termination.**

 **10.1** **Termination for Convenience.**  District may terminate this Agreement for convenience by giving ten calendar days written notice to Supplier. In the event District elects to terminate the Agreement without cause, it will pay Supplier for Services satisfactorily provided up to the effective date of termination, provided all Work Product (as defined below), whether complete or incomplete, has been submitted to District in the time and manner specified in the notice of termination.

 **10.2** **Termination for Cause.** If Supplier breaches this Agreement by failing to timely or satisfactorily perform any of its obligations or otherwise violates the terms of this Agreement, the District may terminate this Agreement by giving written notice ten calendar days prior to the effective date of termination, specifying the reason and the effective date of the termination. Supplier will be entitled to payment for all Services satisfactorily provided up to the effective date of termination, except that the District may deduct from that payment the amount of costs the District incurred, if any, because of Supplier’s breach of the Agreement, including any failure to submit all Work Product (as defined below), whether complete or incomplete, to District in the time and manner specified in the notice of termination.

**11. Work Product and Copyrights.** District will be the sole owner of all rights to any work product in any form which has been prepared by Supplier on District’s behalf pursuant to this Agreement (“**Work Product**”), including copyright interests, unless otherwise specified in writing by the Parties. Supplier must not disclose any Work Product to any third party without the written permission of District. If the Supplier uses copyrighted material in the performance of the Services, the Supplier must secure the necessary permission and/or pay any royalties or fees required to use such copyrighted material.

**12. Records.** Unless otherwise specified in **Exhibit A**, Supplier will maintain records related to this Agreement, including records of the Services performed, on a daily basis if necessary, for a period of four years from expiration or termination of this Agreement, unless the records relate to hazardous materials, in which case the records must be maintained for at least 30 years. Supplier’s accounting systems will conform to generally accepted accounting principles, and all records will provide a breakdown of total costs charged under this Agreement, including properly executed payrolls, time records, invoices, and vouchers. Supplier will permit District to inspect, examine, and audit Supplier’s books, records, accounts, and any and all data relevant to this Agreement at any reasonable time, and will furnish to the District any other evidence or information requested by District. The State of California or any federal agency with an interest in this Agreement has the same rights conferred to the District by this Section.

**13. Confidentiality.** Unless disclosure is required by applicable law or valid court order, Supplier will maintain the confidentiality of all non-public information made known to or discovered by Supplier in connection with this Agreement and will not disclose or otherwise disseminate any information conveyed by or through the District to Supplier relating to this Agreement. Supplier will immediately notify District in writing if it is requested to disclose any such information.

**14. General Provisions.**

**14.1 Assignment and Successors.** Supplier may not assign its rights or obligations under this Agreement, in part or in whole, without District’s written consent. This Agreement is binding on Supplier’s and District’s lawful heirs, successors, and permitted assigns. Notwithstanding the foregoing, Supplier may use a qualified subcontractor, acceptable to the District, to perform a portion of the Services, subject to prior written approval by District and provided that the subcontractor is bound by the terms of this Agreement.

**14.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Agreement.

**14.3 Nondiscrimination.** Supplier will not discriminate in the employment of persons under this Agreement because of race, color, ancestry, national origin, religion, sex, marital status, sexual orientation, age, medical condition, disability, veteran status, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

**14.4 Choice of Law and Venue.** This Agreement will be governed by California law, and venue will be in the Superior Court of San Joaquin County, and no other place. Supplier hereby waives any right pursuant to Civil Code section 394 to transfer any action in law or in equity arising from or relating to this Agreement to any venue outside of San Joaquin County.

**14.5 Integration.** This Agreement and the documents incorporated in this Agreement constitute the final, complete, and exclusive terms of the agreement between the District and the Supplier.

**14.6 Severability.** If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, in part or in whole, the remaining provisions of the Agreement will remain in full force and effect.

**14.7 Amendment.** No amendment or modification of this Agreement will be binding unless it is in a writing duly authorized and signed by the Parties to this Agreement.

**14.8** **Provisions Deemed Inserted.** Every provision of law required to be inserted in this Agreement will be deemed to be inserted, and this Agreement will be construed and enforced as though included. If it is discovered that through mistake or otherwise that any required provision is not inserted, or not correctly inserted, this Agreement will be amended to make the insertion or correction.

**14.9** **Precedence.** If any provision in any document attached to or incorporated in this Agreement conflicts with or is inconsistent with the provisions set forth in the body of this Agreement, the provisions set forth in the body of this Agreement will control over any such conflicting or inconsistent provisions.

**14.10 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing so specifies.

**14.11 Force Majeure.** If either Party is delayed or hindered in or prevented from the performance of any act required under this Agreement because of natural disasters, 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 will be excused for the period during which the Force Majeure Event prevents such performance, and the period for that performance will be extended for an equivalent period. Delays or failures to perform resulting from lack of funds will not be Force Majeure Events.

**14.12 Headings.** The headings in this Agreement are included for convenience only and will not affect the construction or interpretation of any provision in this Agreement or any of the rights or obligations of the Parties to this Agreement.

**14.13 Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument.

**14.****14 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the Party that he or she represents, and that this Agreement is legally binding on that Party. If Supplier is a corporation, signatures from two officers of the corporation are required as further specified in California Corporation Code section 313.

**14.15 Supplier Registration Form.** Before providing any Services under this Agreement, the Supplier must submit a completed Supplier Registration Form, which is available on the District’s website at: <https://www.deltacollege.edu/campus-offices/administrativeservices/purchasing/become-supplier> as well as register with PlantBids at: <https://www.planetbids.com/portal/portal.cfm?CompanyID=44364>.

*[Signature page follows.]*

The Parties agree to this Agreement as witnessed by the signatures below:

**SUPPLIER:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Business Name

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name, Title

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

*Second signature required if a Corporation*

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name, Title

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

**DISTRICT:**

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name, Title

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

**Attachments:**

Exhibit A: Scope of Services

Exhibit B: Payment

**Exhibit A**

**SCOPE OF SERVICES**

<Insert or attach a detailed description of the required Services, including time(s) for performance and completion of the Services, milestones, deliverables, reporting requirements, timeline within the agreement term, etc.>

**Exhibit B**

**PAYMENT**

<Insert or attach prices or rates that will be used to determine payments to the Supplier as applicable, e.g., hourly rates by name and/or position, etc. Modify as needed depending on whether payment is based on a fixed lump sum or whether payment is to be based on hourly rates subject to the not-exceed amount set forth in Section 3. If performance milestones are to be used, specify the milestone, the time for performance, and the amount to be paid upon satisfactory completion of the milestone.>