

AGREEMENT FOR PROFESSIONAL SERVICES



CONTRACT No.:

COLLEGE:

PROJECT:

CONSULTANT:

Maximum Fee for Services:	\$
Reimbursables Not to Exceed:	\$
Total Amount (Not to Exceed):	\$

THIS AGREEMENT (“Agreement”) is entered into on the _____ day of _____, _____, by and between the Los Angeles Community College District, hereinafter referred to as “District”, and _____ hereinafter referred to as “Consultant.”

THE DISTRICT AND CONSULTANT AGREE AS FOLLOWS:

1. CONSULTANT SERVICES

1.1 Term. This Agreement shall be deemed effective on _____, 20__ and shall continue in effect until the earlier of: (1) full performance by Consultant; (2) termination by District or Consultant in accordance with Article 15, below; or (3) five (5) years from said effective date of this Agreement. Expiration of this Agreement pursuant to Clause (3), above, shall not be construed as relieving the Consultant from its liability or responsibility to District, if any, for failing to complete or timely complete its performance under and in accordance with this Agreement.

1.2 Project Objective. Consultant shall perform, in a manner that is consistent with the directives of the District, all professional _____ **[insert a general description of the professional services to be provided]**, including, but not limited to, those services listed in Exhibit “A” attached hereto (“Services”), that are reasonably required to accomplish the following objectives of District: _____

1.3 Scope of Services. The parties hereto have endeavored to delineate the scope of the Services to be provided by Consultant in Exhibit “A” attached hereto. However, such delineation is intended to be illustrative only and Consultant shall be required, without adjustment or addition to the compensation agreed to herein, to provide any services, whether or not listed in Exhibit “A”, that are within the scope of its field of professional practice and that are reasonably inferable as being necessary, or that would be customarily provided by other providers of professional services of the type and nature provided for in this Agreement, to accomplish the objectives expressly contemplated by this Agreement.

1.4 Meetings, Certifications. Consultant shall, in connection with its performance of the Services, attend meetings with District and execute such certifications or other documentation as reasonably requested by District that are confirmatory of matters within the scope of the Services required by this Agreement.

1.5 Applicable Laws. Services performed and work product produced by Consultant shall at all times comply with applicable federal, state and local laws, ordinances, regulations and codes ("Applicable Laws") enacted as of the date that such Services are performed or work product delivered to District.

1.6 Corrections. All corrections or clarifications to Services or Designs and Documents provided by Consultant shall be performed by Consultant at Consultant's own expense and without reimbursement or payment of any compensation by District.

1.7 Personnel. Consultant has designated _____ to serve as Project Manager for the performance of the Services. The designated Project Manager shall not be removed or re-assigned by the Consultant without the prior written consent of the District. Upon request by the District, exercised in its sole discretion, Consultant shall remove and replace any employee or Subconsultant with another individual or Subconsultant acceptable to District.

1.8 Progress Reports. Consultant shall include with each invoice it submits a brief narrative progress report which shall include, at a minimum, a description of the progress accomplished in the period of time covered by the current invoice, the current status of the Consultant's performance of Services, any problems or delays encountered and a forecast of Services that will be completed in the next thirty (30) days.

1.9 Licensing. Consultant warrants and represents that it has, and will maintain throughout performance of this Agreement, any and all professional and business licenses issued by the State of California or other appropriate federal, state or local governmental authority, required by Applicable Laws for the performance of the Services.

1.10 Performance Standard. All services performed by Consultant and its Subconsultants in connection with this Agreement shall be performed in accordance with the requirements of this Agreement and, without intending to limit any of Consultant's obligations expressly assumed under this Agreement, in a manner consistent with the standard of care under California law applicable to those who provide similar services for projects of the type, scope and complexity of the Project and in a manner consistent with the College's and the District's economic, educational and governmental best interests. Design services required under this Agreement shall be prepared in accordance with the District's CADD Standards as set forth in the Program Management Plan, which contain the basic requirements for production and use of electronic files of documents depicting design information. Consultant's execution of this Agreement constitutes its acknowledgement that it has reviewed the CADD Standards and will conform thereto.

1.11 Subconsultants. Consultant may, with prior approval by District not to be unreasonably withheld, enter into written contracts with subconsultants ("Subconsultants") to perform portions of the Services; provided, however, that (1) Consultant shall remain fully responsible for the acts and omissions of its Subconsultants; and (2) such written contracts shall, without creating any contractual obligation on the part of the District to the Subconsultant, include provisions whereby (a) each Subconsultant accepts and agrees to be bound by all of the obligations of this Agreement, including, without limitation, those obligations pertaining to licensing, indemnification, insurance, accounting, records and ownership of designs and documents, and (b) provides for contingent assignment of the Subconsultant's contract to District or its designee effective only upon written acceptance by District or its designee.

1.12 Prevailing Wages. Pursuant to Labor Code Section 1771.7, this Project will will not be subject to the District's approved Labor Compliance Program, initially approved on July

19,2004. For questions or assistance concerning the Labor Compliance Program, contact Patricia Padilla or Miguel Cabral, Padilla & Associates, Inc., at (714) 577-5340. If neither box in the preceding sentence is checked, then it shall be deemed that there is no Labor Compliance Program that applies to the Project. The Consultant and its Subconsultants shall, to the extent applicable to work or services performed under this Agreement, comply with the provisions of the California Labor Code (including, without limitation, California Labor Code Sections 1720, 1735, 1775, 1777.5 and 1776.6), the Project Labor Agreement and Labor Compliance Program (if any) applicable to persons performing services or work for "construction" (including, without limitation, inspection and land surveying work, as defined in California Labor Code Section 1720) relating to prevailing wage, hours of work, apprentices, and maintenance and submission of certified payroll reports, and shall pay appropriate penalties to the District for failure to comply pursuant to the California Labor Code, including, but not limited to, §§ 1775, 1777.7 and 1813. Pursuant to California Labor Code Section 1773, the Director of the Department of Industrial Relations has determined the general prevailing rates of wages per diem, and for holiday and overtime work, in the locality in which this Agreement is to be performed, for persons performing such work or services and said rates are on file with the District at its principal office and available to any interested party upon request. If it becomes necessary for the Consultant or any Subconsultant to employ any person in a capacity for which no minimum wage rate is specified, the Consultant shall notify the District which shall promptly seek determination of the applicable prevailing wage rate. Without limitation to any other remedies or penalties provided for by Applicable Laws, failure to comply with the requirements of this Paragraph shall result in the Consultant being assessed penalties of up to fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the required prevailing wage. To the extent required by Applicable Laws, the Consultant shall maintain and make available for inspection accurate, certified payroll records in accordance with California Labor Code Section 1776.

1.13 Community Economic Development. Consultant will, at all times in its performance of its obligations under this Agreement strictly adhere to the requirements of the Board of Trustees Resolution on Economic Community Outreach adopted October 17, 2001 and District Board Rule 7103.17, the Policy on Opportunities for Local, Small and Emerging Businesses adopted January 14, 2004, each of which shall, notwithstanding any provision thereof to the contrary, be deemed applicable to Consultant's performance of this Agreement.

1.14 Calendar Days. All references in this Agreement to "days" shall, unless otherwise identified as working or business days, be deemed to mean calendar days.

2. DISTRICT'S RESPONSIBILITY

2.1 Reference Information. Upon request by Consultant, District shall endeavor to provide Consultant with plans, specifications and other information that reasonably available to District and necessary in order for Consultant to perform the Services. Consultant may rely upon such information; however, District does not warrant, expressly or impliedly, the accuracy, suitability or completeness of such information or of any data, opinions or recommendations contained therein.

2.2 Access. District shall provide Consultant access to such real properties owned by the District, as needed to perform the Services. Neither Consultant nor any Subconsultant shall enter upon any real property owner by District without prior notice and consent by District. Consultant and its Subconsultants shall, if requested sign and cause each employee entering real property owned by the District to sign, a release of liability in such form as provided by District.

2.3 Approvals. Approvals by or on behalf of District of Designs and Documents prepared by Consultant, or of any services performed under this Agreement, shall not, under any circumstances, be deemed as relieving Consultant from its sole responsibility to produce and prepare such documents and perform such services in a manner consistent with Applicable Laws and the standards of performance set forth in this Agreement.

3. OWNERSHIP OF DESIGNS AND DOCUMENTS

All plans, drawings, designs, reports, data and other information prepared by Consultant ("Designs and Documents") or its Subconsultants shall be and remain the sole property of District. Without limitation to the foregoing, District shall hold and Consultant shall be deemed to have been irrevocably assigned to District in perpetuity, with no reserved or retained rights in any other persons or entities, all copyrights to the Designs and Documents. The District hereby grants to Consultant and its Subconsultants a license, revocable at will of District, to use and copy the Designs and Documents during the term of this Agreement for the sole purpose of performing the Services. Upon the earlier of termination of this Agreement or completion of performance of the Services, Consultant and its Subconsultants shall deliver all of the original plans, drawings, reports, data and other information prepared in the course of their performance of this Agreement to District.

4. CONSULTANT'S COMPENSATION

District agrees to pay Consultant for the faithful performance of this Agreement a total compensation ("Fee") consisting of **[check box that applies]**:

an **Hourly Rate** compensation, for actual hours of Services performed that is based upon the hourly rates set forth in the rate schedule set forth in Exhibit "B" attached hereto, which rates shall remain fixed for the duration of the term of this Agreement, not to exceed the Maximum Fee stated on the first page of this Agreement, or

a **Fixed Fee** compensation, in the lump sum amount of the Maximum Fee set forth on the first page of this Agreement,

plus, reasonable out-of-pocket expenses incurred and paid in the performance of the Services that are listed in Exhibit "B" attached hereto ("Reimbursable Expenses"), not-to-exceed (unless otherwise approved in writing in advance by District in the exercise of its sole discretion) the "Reimbursables Not to Exceed" amount set forth on the first page of this Agreement.

5. PAYMENT

Consultant shall submit to District each month during performance of this Agreement an invoice, in such format as specified by District, for sums earned for (1) Services performed, not to exceed a reasonable allocable portion of its Maximum Fee that corresponds to the percentage of Services that have been properly performed, and (2) Reimbursable Expenses authorized, incurred and paid, during the prior month. Each invoice shall contain such detailed information on the Services performed and such documentation as District may reasonably request verifying Reimbursable Expenses incurred and paid, as well as Conditional Releases Upon Progress Payment of Stop Notice Rights in the form required by Civil Code Section 3262 executed by Consultant and its Subconsultants for the current month and Unconditional Releases Upon Progress Payment of Stop Notice Rights in the form required by Civil Code Section 3262 executed by Consultant and its Subconsultants for the month preceding the month covered by the current invoice. With Consultant's invoice requesting final payment, Consultant shall include Unconditional Releases Upon Final Payment of Stop Notice Rights in the form required by Civil Code Section 3262 executed by Consultant and its Subconsultants. Except for amounts authorized to be retained or withheld by District under this Agreement and sums disputed in good faith by District, District shall pay Consultant amounts due upon an invoice properly prepared and submitted in accordance with this Agreement within thirty (30) days. District may withhold from payments to the Consultant a sum equal to one hundred and fifty percent (150%) of any actual loss, or the District's estimate of any threatened loss, associated with a breach by Consultant of any obligation under this Agreement. District reserves the right to issue payments to Consultant and any Subconsultant by means of check made payable jointly to Consultant and such Subconsultant.

6. ACCOUNTING RECORDS

Consultant and its Subconsultants shall maintain books and records of account of all charges, costs, expenses and time expended in connection with this Agreement. Such books and records shall be maintained on an accounting basis acceptable to District and shall be available for examination and copying by District or its authorized representative(s) during regular business hours within one (1) week following a request by District to examine same. Failure by Consultant to permit such examination and copying within one (1) week of request, or such longer period as may be authorized by District in writing, shall permit District to withhold all further payments under this Agreement until such examination and copying is completed.

7. ADDITIONAL SERVICES

The District shall have the right to order, in writing, performance of additional services ("Additional Services") not within the scope of the Services described in Section 1 above. The District and Consultant shall, prior to performance by Consultant of Additional Services, endeavor in good faith to negotiate a fixed fee or not-to-exceed amount for compensation for such Additional Services. If they are unable to do so, then upon written instruction by District the Consultant shall perform the Additional Services on an hourly basis. Hourly compensation for Additional Services authorized to be performed on an hourly basis shall be based on the rates set forth in Exhibit "B" attached hereto, or if no rates are set forth in Exhibit "B", at hourly rates approved in writing by the District prior to performance of such Additional Services. Unless otherwise agreed in writing by District and Consultant, Consultant shall, in addition to its agreed fixed fee or hourly compensation for performance of Additional Services as provided hereinabove, be entitled to reimbursement of its out-of-pocket costs and expenses listed in Exhibit "B" that are directly incurred and paid in the performance of such Additional Services. No compensation shall be paid for Additional Services performed without written approval by District issued prior to performance of the Additional Services and an agreement by District as to the compensation therefor. In the event of a dispute over whether a request by District constitutes a Service or Additional Service, Consultant shall, without delay or interruption in performance and without prejudice to its right to additional compensation if the request is adjudged to constitute an Additional Service, comply with the District's request.

8. TIME OF COMMENCEMENT AND PERFORMANCE

Time is of the essence to all of Consultant's obligations under this Agreement. Consultant shall commence its Services under this Agreement upon the date that this Agreement is effective pursuant to Paragraph 1.1, above, or upon such other date as may be directed in writing by District. All Services shall be completed with reasonable promptness so as to not delay the District in meeting the Schedule Deadlines set forth on the first page of this Agreement.

9. INDEMNIFICATION

9.1 General Indemnity. To the fullest extent permitted by Applicable Law, Consultant agrees to defend at its own expense, indemnify and hold harmless, District, the District's colleges, the District's Board of Trustees, and each of their respective members, officers, employees, agents and volunteers ("Indemnitee(s)"), and each of them, through legal counsel reasonably acceptable to District, from any and all Losses (other than a loss of allocation of State Funds based on enrollment) that arise out of or relate to that arise out of or relate to any act or omission constituting ordinary and not professional negligence (including, without limitation, negligent breach of contract), recklessness or willful misconduct on the part of Design Consultant or its Subconsultants, or their respective employees, agents, representatives or independent contractors. The Indemnitees shall be entitled to the defense and indemnification provided for hereunder regardless of whether the Loss is in part caused or contributed to by the acts or omissions of an Indemnitee or any other person or entity; provided, however, that nothing contained herein shall be construed as obligating Consultant to indemnify and hold harmless any Indemnitee to the extent not required under the provisions of Paragraph 9.3, below.

9.2 Indemnity for Professional Negligence. To the fullest extent permitted by Applicable Law, Consultant agrees to indemnify and hold harmless the Indemnitees, and each of them against any and all Losses (other than a loss of allocation of State Funds based on enrollment), and reimburse any Indemnitee for any attorney's fees or court costs incurred in defense of any action brought against such Indemnitee, to the extent arising out of or relating to any act or omission constituting professional negligence on the part of Consultant or its Subconsultants, or their respective employees, agents, representatives or independent contractors. The Indemnitees shall be entitled to the indemnification and reimbursement provided for hereunder regardless of whether the Loss is in part caused or contributed to by the acts or omissions of an Indemnitee or any other person or entity; provided, however, that nothing contained herein shall be construed as obligating Consultant to indemnify and hold harmless any Indemnitee to the extent not required under the provisions of Paragraph 9.3, below.

9.3 Limitations on Indemnity Obligation. Without affecting the rights of District under any other provision of this Agreement, Consultant shall not be required to indemnify or hold harmless an Indemnitee for a Loss due to that Indemnitee's negligence, recklessness or willful misconduct; provided, however, that such negligence, recklessness or willful misconduct has been determined by agreement of Design Consultant and Indemnitee or has been adjudged by the findings of a court of competent jurisdiction. In instances where an Indemnitee's active negligence accounts for only a percentage of the Loss involved, the obligation of Consultant will be for that portion of the Loss not due to the active negligence of that Indemnitee.

9.4 Subconsultant Indemnity Agreements. Consultant agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Article 9 from each and every Subconsultant, of every Tier. In the event Consultant fails to do so, Consultant agrees to be fully responsible to provide such defense and indemnification according to the terms of this Article 9.

9.5 No Limitation by Insurance or Employee Benefits. In claims against any Indemnitee under Paragraphs 9.1 or 9.2, above, by an employee of Consultant or any Subconsultant, of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations under said Paragraphs shall not be limited by the amount or type of damages, compensation or benefits payable by or for Consultant or a Subconsultant under any policy of insurance, workers' compensation acts, disability benefit acts or other employee benefit acts.

10. INSURANCE

10.1 Consultant shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-: VI.

Commercial general liability at least as broad as ISO CG 0001 (per occurrence) (general aggregate)	1,000,000 2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	1,000,000
Errors and omissions liability (per claim and aggregate)	1,000,000
Workers' compensation	Statutory

10.2 All insurance required by this Section 10 shall apply on a primary basis.

10.3 Auto liability insurance shall cover owned, nonowned and hired autos. If Consultant owns no vehicles, auto liability coverage may be provided by means of a nonowned and hired auto endorsement to the general liability policy.

10.4 All insurance policies shall provide that the insurance coverage shall not be canceled by the insurance carrier, except for nonpayment of premium, without thirty (30) days prior written notice to the District. Consultant agrees that it will not cancel or reduce said insurance coverage.

10.5 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect District may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, District may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

10.6 At all times during the term of this Agreement, Consultant shall maintain on file with the District a certificate of insurance, in a form acceptable to the District, showing that the aforesaid policies are in effect in the required amounts. The general liability policy shall contain or be endorsed to contain a provision including the Indemnitees as additional insureds. Consultant shall promptly file with the District's Proposition A/AA Bond Program Manager such certificate or certificates and endorsements if applicable.

10.7 No policy required by this Section 10 shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the Indemnitees.

10.8 Coverage for the additional insureds shall apply to the fullest extent permitted by law excepting only the active negligence of the District as established by agreement between the parties or by the findings of a court of competent jurisdiction.

10.9 All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

10.10 Any "self-insured retention" must be declared and approved by the District. District reserves the right to require the self-insured retention to be eliminated or replaced by a deductible. Self-funding, policy fronting or other mechanisms to avoid risk transfer are not acceptable. If Consultant has such a program, Consultant must fully disclose such program to the District.

10.11 Consultant shall include all of its Subconsultants as insureds under its policies of insurance required by this Section 10 and shall require that its Subconsultants maintain insurance coverages on the same terms and with the same coverage amounts as required of Consultant under this Agreement. Consultant shall, upon request by District, furnish separate certificates and endorsements evidencing compliance with the requirements of this Paragraph.

11. INDEPENDENT CONTRACTOR

Consultant is and shall at all times remain, as to the District, a wholly independent contractor. Neither the District nor any of its agents shall have control over the conduct of Consultant or any of Consultant's officers, agents or employees, except as herein set forth. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the District.

12. FAIR EMPLOYMENT PRACTICES/EQUAL OPPORTUNITY ACTS

In the performance of this Agreement, Consultant shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Sections 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S. C. 200e - 217), whichever is more restrictive.

13. CONFLICTS OF INTEREST

Consultant agrees not to accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by the District on any matter in connection with which Consultant has been retained pursuant to this Agreement.

14. SUCCESSORS AND ASSIGNS

This Agreement covers professional services of a specific and unique nature. Consultant shall not assign or attempt to assign any portion of the contract, or any claim or right to monies due under this Agreement, without prior written approval of District, which approval may be granted or withheld in the sole discretion of District.

15. TERMINATION

15.1 District may terminate this Agreement, in whole or in part, at any time upon five (5) days written notice to Consultant either in the event of a default by Consultant, or solely for its convenience and without cause or default. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice. Without limitation to any of District's other rights or remedies under law or in equity, in the event of cancellation by District due to default by Consultant, District shall have the right, but not the obligation, to arrange for completion of the Services by others and no sums shall be due or payable to Consultant until the Services have been completed and reasonable time has passed for District to determine the scope of its damages caused by such default.

15.2 In the event of termination of this Agreement by District for its convenience and without the occurrence of default by Consultant, Consultant shall be paid in full compensation for all Services performed by Consultant in accordance with this Agreement such sums as are due in accordance with the payment provisions of this Agreement for Services performed and authorized Reimbursable Expenses incurred and paid prior to the effective date of such cancellation; provided, however, that in no event shall the amount of money paid for performance of Services exceed the product of: (1) the amount of Services properly performed expressed as a percentage of the total Services required under this Agreement, multiplied times (2) the Maximum Fee set forth on the first page of this Agreement. Consultant agrees to accept the sums provided for in this Subdivision as its sole compensation and waives the right to any additional compensation or damages of any kind, including, without limitation, lost profits or opportunity damages, prospective losses or consequential damages.

15.3 In the event a termination by District for default by Consultant is adjudged to have been wrongful, District will pay to Consultant as its sole compensation such sums as Consultant is entitled to receive under Paragraph 15.2, above.

16. DISTRICT REPRESENTATIVE

The Executive Director of Facilities Planning and Development, or its designee, shall represent the District in connection with the performance and enforcement of this Agreement. No other person has the authority to contractually bind the District to any modification of this Agreement, including without limitation, any modification of the scope of Services or compensation due under this Agreement.

17. CONTINUOUS PERFORMANCE

Notwithstanding any dispute or disagreement that may arise between District or Consultant, provided that District makes payment to Consultant of such sums as are due to Consultant under Article 5 of this Agreement, Consultant shall not stop, slow, suspend or terminate its performance of this Agreement or any of the Services under this Agreement, including, without limitation, any disputed Additional Services.

18. NO WAIVER BY DISTRICT

No statement, action or course of conduct by District, including without limitation, any payment, acceptance, review or approval, shall be deemed as a waiver by District of any rights under this Agreement, including without limitation, any rights arising due to default by Consultant, nor as a release of Consultant from its responsibility or liability for errors or omissions by Consultant or its Subconsultants in connection with the performance of this Agreement.

19. NOTICE OF OBJECTIONS

Consultant shall give District immediate written notice if, at any time during performance of this Agreement, Consultant objects to any decision or action by District for any reason, including, without limitation, on the basis that it is in conflict with any advice of Consultant. Failure to provide such written objection shall be deemed to be Consultant's approval of such decision or action as being consistent with Consultant's advice.

20. SEVERABILITY

Should any part, term, portion or provision of this Agreement, or the application thereof to any party or circumstance, be held to be illegal, invalid or in conflict with any Applicable Laws, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other any party or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by Applicable Laws.

21. NO THIRD PARTY RIGHTS

Nothing contained in this Agreement shall be construed as creating or conferring any rights upon any person or entity other than the parties signing this Agreement.

22. EXTENT OF AGREEMENT

This Agreement represents the entire and integrated Agreement of the parties and supersedes any and all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

23. WAIVER OF CONSEQUENTIAL DAMAGES

The Consultant and District waive all rights and claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes, without limitation, damages incurred by either District or Consultant for loss of use, loss of profit or income, loss of management or services, loss of productivity, loss of financing or funding, loss of business reputation and all consequential damages due to termination or suspension by Consultant or District. Nothing herein shall be interpreted as a limitation on or a release or waiver of any rights of the District under Article 9, above (Indemnity). For purposes of the foregoing waiver, the term 'consequential damages' means damages incurred by either District or Consultant for loss of use, loss of profit or income, loss of revenue, lost opportunity, additional or unabsorbed overhead, loss of management or services, loss of productivity, loss of financing or funding, loss of business reputation, loss of bonding and all similar indirect, economic damages that are caused as a result of either delay or that result from a termination or suspension (for default or convenience) of all or any portion of Agreement. Consequential damages do not include direct or indirect damage or injury to persons or tangible property, including, without limitation, the repair or replacement of tangible property damaged or lost.

24. SURVIVAL

All provisions of this Agreement that either expressly, or by their nature, require performance or assumption by the Consultant of an obligation that extends beyond termination or completion of performance under this Agreement, including, without limitation, the Consultant's obligations of, or relating to, indemnification, insurance, confidentiality, accounting and records retention and examination, and ownership of documents shall be deemed to survive either termination or complete performance of this Agreement.

25. DISPUTE RESOLUTION

For purposes of this Section 25, a "Claim" means a written demand or assertion by District or Consultant seeking, as a matter of right, an interpretation of contract, payment of money, recovery of damages or other relief. A Claim does not include the following: (1) tort claims for personal injury or death; (2) stop notice claims; or (3) the right of the District to specific performance or injunctive relief to compel performance. Claims shall be resolved by the parties in accordance with the provisions of this Section 25, in lieu of any and all rights under the law that either party may have to have its rights adjudged by a trial court or jury. Disputes between the District and the Consultant that do not constitute Claims shall be resolved by way of an action filed in the Superior Court of the State of California, County of Los Angeles. The parties shall utilize each of the following steps in the sequence they appear below to resolve any Claims. First, each party shall participate fully in good faith negotiations to resolve the Claim. Senior managing officers or representatives of each party shall be present at the negotiations. All discussions that occur during such negotiations and all documents prepared solely for the purpose of the negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119, 1120 and 1152. If the Claim remains unresolved after completion of such negotiations, the parties agree to submit the Claim to non-binding mediation before a third party mediator appointed by the American Arbitration Association (AAA) in accordance with the AAA Construction Industry Mediation Rules. Upon either the District or Consultant declaring mediation ended, if the Claim is not resolved, then the party wishing to further pursue resolution or determination of the Claim shall submit the Claim for final and binding arbitration administered by the Office of Administrative Hearings for the State of California and conducted in accordance with the provisions of Chapter 4 of Division 2 of Title 1 of the California Code of Regulations. The award of the arbitrator therein shall be final and may be entered as a judgment by any court of competent jurisdiction. The parties hereto consent to the consolidation or joinder of any claims involving other person or entities to the extent that resolution of such claims are reasonably necessary to the complete resolution of a Claim between the District and the Consultant or between the District or Consultant and any other person or entity against whom the District or Consultant may have a right of indemnity or contribution.

26. LIST OF EXHIBITS

The following Exhibits are attached hereto as incorporated as part of this Agreement:

- Exhibit "A"** - Description of Services
- Exhibit "B"** - Supplemental Compensation Provisions

**LOS ANGELES COMMUNITY COLLEGE
DISTRICT**

By: _____
Title: _____

(CONSULTANT)

By: _____
Title: _____