

Foothill-De Anza Community College District

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
(Agreements Less than \$350,000)**

This agreement shall be used for professional services when the scope of services includes *pre-design, programming, special and conceptual studies, planning, and/or assessment work*. Pursuant to Civil Code Section 2782.8 a design professional is defined as an architect, landscape architect, engineer, or land surveyor.

This Agreement entered this _____ day of _____, 2____, by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and _____ hereinafter called "Design Professional." Each of District and Design Professional are sometimes hereinafter referred to as a "Party" and collectively as the "Parties".

WITNESSETH

WHEREAS, pursuant to Foothill-De Anza Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage contractors to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, it is necessary and desirable that a Design Professional be engaged by District for the purpose of performing services hereinafter described:

NOW, THEREFORE, IT IS HEREBY AGREED by the Parties as follows:

1. Services to be performed by Design Professional. In consideration of the payments hereinafter set forth, Design Professional shall perform services for District in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A" attached hereto and by this reference made a part hereof. Design Professional shall perform all the services described in Exhibit A for the sum not to exceed \$_____.
2. Payments. In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", District shall make payment to Design Professional in the manner specified in Exhibit "A".
3. Relationship of the Parties. It is understood that this is an Agreement by and between contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Design Professional.
4. Non-Assignability. Design Professional shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this section automatically shall terminate this Agreement.
5. Contract Term. This Agreement shall be in effect from _____ through _____. The District may terminate this contract at any time for any reason by providing 30 days notice to Design Professional. Termination to be effective on the date specified in the notice. In the event of termination under this section, Design Professional shall be paid for all work provided to the date of termination.

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6. Indemnification

6.1. Design Professional's Indemnity of District.

6.1.1. To the extent that claims are made against the District which arise out of, pertain to or relate to negligence, recklessness or willful misconduct of the Design Professional, Design Professional shall defend, hold harmless and indemnify District and its employees, officers, Trustees, agents and representatives against such claims. Provided, however, in no event shall the cost to defend such claims charged to the Design Professional exceed the Design Professional's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants in such action is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other Parties regarding unpaid defense costs.

6.1.2. The types of claims included within Design Professional's above-stated indemnity obligation include (i) injury or death of Design Professional's or the Design Professional's Design Consultants' employees arising out of this Agreement; (ii) injury or death of persons or damage to property, including the removal or replacement of any in-place work during or after project completion; (iii) other costs or charges, to the extent the liabilities, damages and losses are caused by willful misconduct, recklessness, or negligence of the Design Professional or Consultant of the Design Professional, and (iv) shall include, subject to the proviso in subsection 6.1.1 above, attorneys fees and costs incurred by the District.

6.1.3. Design Professional's indemnity obligation as stated herein shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable statute of limitations.

6.1.4. This indemnity agreement shall not be construed to limit the enforceability of other contractual provisions between the District and the Design Professional requiring cooperation with the public agency regarding any claim by a construction contractor.

6.1.5. It is the intent of the District that the Design Professional's indemnity obligation set forth above shall be in accordance with California Civil Code Sections 2778 and 2782.8 and shall be a Type II (comparative/proportionate) agreement and not a Type I agreement, which would otherwise shift all indemnity obligations to the Design Professional.

6.2. Design Professional Reimbursement of the District's Attorneys Fees and Indemnity Payment.

The Design Professional shall immediately tender demand(s) for indemnity made by the District to Design Professional's insurance carrier for a determination within 30 days from the date of tender. Consistent with the proviso in subsection 6.1.1 above, the insurance company shall be required to agree to a rough approximation of potential liability of the Design Professional, and agree to reimburse the District for its defense fees incurred in proportion to that approximation. At the conclusion of the underlying matter or claim for which indemnity is sought (through voluntary settlement, arbitration award, or court judgment), the Design Professional shall within 30 days reimburse the District for all settlement monies paid. Should the Design Professional and/or its insurance company fail or refuse to proportionally reimburse the District for: (a) its attorneys fees and costs of defense; or (b) indemnity paid, then either matter shall be submitted to binding arbitration for determination within 60 days, after failure or refusal to make payment to the District.

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- 6.3. Design Professional Bound to Arbitration by Other Claims. In the event of any claim, arbitration demand filed on behalf of the prime Design Professional or any Design Professional sub-consultants in which design deficiencies or errors, or Design Professional contract administration deficiencies are alleged as a basis for said claim, Design Professional agrees to participate as a party in any such arbitration or state court litigation, and shall further be bound as a party to any arbitration set forth or required under California Public Contract Code § 20104, et seq.
- 6.4. District's Indemnity of Design Professional. The District shall indemnify and hold harmless the Design Professional, its employees and consultants from all claims arising of bodily injury (including death) and physical damage (other than to the project itself and property covered by insurance), but only to the extent that they arise out of the willful acts, omissions or other conduct of the District, and/or the sole negligence of the District.
7. Insurance. If applicable, insurance requirements are attached as Exhibit "B."
8. Non-Discrimination.
 - 8.1. General. No person shall, on the grounds of race, color, national or ethnic origin, religious affiliation or non-affiliation, gender, marital status, sexual orientation, age, physical or mental disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement.
 - 8.2. Employment. Design Professional shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Design Professional's personnel policies shall be made available to District upon request.
9. Substitutions: If particular people are identified in Exhibit "A" as working on this contract, the Design Professional will not assign others to work in their place without written permission from the District Purchasing Agent. Any substitution shall be with a person of commensurate experience and knowledge.
10. Sole Property of the District: Any system or documents developed, produced or provided under this contract shall become the sole property of the District. Notwithstanding any other provision herein, any intellectual property discovered or developed by Design Professional in the course of performing or otherwise as a result of its work hereunder shall be the sole property of the District.
11. Contract Renewal. This Agreement may be renewed for additional time periods as long as the original contract term plus the renewal periods does not exceed five years, provided that both Parties sign the renewal, insurance coverage pursuant to Section 7 is still in effect, and the cost of the terms combined will not exceed (a) \$350,000.00.
12. Expenditure Of Public Funds. Design Professional agrees to comply with Government Code Section 8546.7 which provides that the contracting Parties for any contract involving expenditure of public funds in excess of \$10,000.00 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.

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13. Confidentiality. In performing its duties hereunder the Design Professional may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC Section 1232(g). The Parties agree that such incidental access is not a provision or conveyance or disclosure to Design Professional of student record information in violation of Section 1232(g) or of any similar state law. Design Professional agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.
14. Merger Clause. This Agreement, including Exhibit "A" attached hereto and incorporated herein by reference, constitutes the sole agreement of Parties hereto and correctly states the rights, duties and obligations of each Party as of the document's date. Any prior agreement, promises, negotiations or representations between the Parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the District Purchasing Agent. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit "A" attached hereto, the terms, conditions or specifications set forth herein shall prevail.

WITNESS THE EXECUTION HEREOF on the day and year written below.

<p>_____</p> <p>"Design Professional"</p> <p>By: _____</p> <p style="text-align: center;"><i>Authorized Signature</i></p> <p>Title: _____</p> <p>Print Name: _____</p> <p>Date: _____</p> <p>Address: _____</p> <p>Email: _____</p> <p>Design Professional's Tax I.D. Number: _____</p>	<p style="text-align: center;">Foothill-De Anza Community College District</p> <p style="text-align: center;">"District"</p> <p>By: _____</p> <p style="text-align: center;"><i>Authorized Signature</i></p> <p>Title: _____</p> <p>Print Name: _____</p> <p>Date: _____</p> <p>Address: _____</p> <p>_____</p> <p>Date* _____</p> <p style="text-align: center;"><i>Approved by Board of Trustees if applicable</i></p>
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***Board approval is required prior to commencement of work if total cost exceeds the applicable bid threshold stated in Public Contract Code 20651 for non-exempted services.**

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Exhibit A

Contract between Foothill-De Anza Community College District and _____,
hereinafter called "Design Professional".

I. Detailed description of services to be performed and work product to be delivered to District by Design Professional: (reference and attach additional pages, if necessary)

II. Amount and Method of Payment: (indicate lump sum payment or rate of pay; also include a list of tasks which must be completed prior to each progress payment and show the timeline for progress payments, if applicable)

In any event, the total payment for services of Design Professional shall not exceed \$_____ and District shall have the right to withhold payment if District determines that the quantity or quality of the work performed is unacceptable.

III. Term of the contract: The term of this contract shall commence on the date specified in Section 5 of this contract.

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Exhibit “B” Insurance Requirements

Design Professional shall not commence work under this Agreement until required insurance certificate has been submitted to the requesting Project Manager. Certificates of insurance shall be issued by an insurer with an A M Best rating of A-VII or better, unless otherwise approved by District Risk Manager. Such certificate shall evidence all coverages and limits required by District in this Agreement and shall specify that insurers will give District thirty (30) days prior written notice of non-renewal or cancellation.

1. MINIMUM SCOPE AND LIMIT OF INSURANCE

Design Professional shall maintain in force, throughout the term of this Agreement, insurance as follows:

- 1.1. Workers' Compensation (statutory limits) and Employers' Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 employee and \$1,000,000 each disease, provided that Design Professional has employees as defined by the California Labor Code;
- 1.2. Commercial General Liability insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations;
- 1.3. Commercial Automobile Liability insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;
- 1.4. Professional Liability insurance, with limits not less than \$1,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$50,000 each claim.

2. OTHER INSURANCE PROVISIONS

- 2.1. If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this agreement.
- 2.2. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance.
- 2.3. Maintenance of the required insurance is a material condition of this Agreement and failure to maintain such insurance may, at the District's option, result in a declaration of material breach and suspension of Design Professional's further work under this Agreement.