



**CONTRACT FOR PROFESSIONAL/CONSULTING SERVICES**

THIS AGREEMENT is entered into as of \_\_\_\_\_ (“Effective Date”) between College of the Mainland (the "College"), a public junior college pursuant to Section 130.004 of the Texas Education Code, and \_\_\_\_\_ (“Contractor”).

**1. SCOPE OF WORK.**

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

**2. COMPENSATION.** For the services to be provided hereunder, the College shall pay Contractor a fee, plus reimbursable expenses, as follows:

- a. \_\_\_\_\_ This is a fixed price contract. College will pay Contractor the amount of \$ \_\_\_\_\_
- b. \_\_\_\_\_ This is not a fixed price contract. College will pay Contractor an amount not to exceed \$ \_\_\_\_\_ based on \$ \_\_\_\_\_ (hourly rate) or as set forth in the Contractor’s proposal dated \_\_\_\_\_, attached hereto.
- c. Reimbursable Expenses: Not to exceed \$ \_\_\_\_\_, which will include but not be limited to the following:
  - (i) Expense of transportation and living when traveling in connection with the project, at College's prior request, for other than regular trips within the College District area.
  - (i) Actual cost for long distance calls and/or Telex charges in connection with the project.
  - (ii) Actual cost of printing and copying in connection with the project.

The above costs will be processed for reimbursement upon receipt of original invoice or other acceptable verification.

All payments must be supported by properly detailed invoices. Payment shall be rendered within forty-five (45) days of receipt of proper invoice from Contractor for services performed. If payment is not rendered within forty-five (45) days of invoice date, there will be a late charge equal to 1% of the amount due in accordance with Section 2251.026 of the *Texas Government Code*.

**3. SCHEDULE.** The work to be performed under this contract shall commence upon the Effective Date of this agreement and continue until the earlier of, \_\_\_\_\_ or until all work is

completed hereunder. If the Contractor fails to prosecute the work with diligence and fails to complete the work within the specified time of this Contract, or any extension thereof, the College may by a written notice to the Contractor, terminate this Contract. In this event the College may complete the work as necessary and may take possession of and use any materials on the work site which is necessary for completing the work.

The Contractor shall be liable for any damage to the College resulting from the Contractor's failure to complete the work within the specified time, whether or not the Contractor continues to work under the terms of this Contract. This liability includes any increased costs incurred by the College in completing the work.

4. **DELAY.** Should the Contractor be delayed in the prosecution or completion of the WORK by other contractors employed by the College, or by any damage caused by fire, weather conditions or casualty for which the Contractor is not responsible, or by general strikes or lockouts caused by reason of any or all of the causes aforesaid, an extended period shall be determined and fixed at the sole discretion of the College; but no such allowance shall be made unless a claim therefore is presented in writing to the College within ten (10) days of the occurrence of such delay. Contract time may be extended only through a written change order.
5. **OWNERSHIP OF DOCUMENTS.** All documents, including original drawings, estimates, specifications, field notes and data are and shall remain property of the College. The Contractor will be furnished reproducible copies of such drawings and other documents needed for implementation of the required work. The College and Contractor agree that these drawings and documents will be used solely in connection with the assignment covered by this Agreement and for no other purpose without prior negotiation.
6. **INDEMNITY.** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the College, its Board of Trustees, its member colleges, agents, employees, officers, directors, volunteers, administrators, successors and assigns from and against all claims, injuries, damages, losses, costs, liens, expenses fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to reasonable attorneys' fees, whether arising before, during or after completion of the Contractor's work, caused by or arising out of or resulting from performance of work, of whatever nature, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission by the Contractor, and subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, but only to that extent, proportion or degree that the claims, damages, losses and expenses are attributable to the act or omission of the Contractor or its subcontractors.
7. **INSURANCE.** Contractor shall secure and maintain in force, until final acceptance for the project and through any warranty period, the following types and amounts of insurance. The insurance shall be evidenced by delivery to the College of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to the College. Send the insurance certificate to College of the Mainland, c/o Purchasing Department, 1200 Amburn Rd., Texas City, TX 77591.

Policies must include the following clauses:

- a. Endorsement to provide a minimum of thirty (30) days advance notice of cancellation, non-renewal, or material change of policies. Reference to the Cancellation endorsement to the policy shall be specified in the Certificate of Insurance and a copy attached to the Certificate of Insurance.
- b. This insurance shall apply as primary insurance/non-contributory with respect to any other insurance or self-insurance programs available to the College. Reference to the as primary/non-contributory endorsement to the policy shall be specified in the Certificate of Insurance and a copy attached to the Certificate of Insurance.
- c. The College shall be named as an Additional Insured on a Primary and Non-Contributory basis on all policies except workers' compensation and professional liability. Reference to the Additional Insured endorsement to the policy shall be specified in the Certificate of Insurance and a copy attached to the Certificate of Insurance.
- d. All required coverages must be endorsed with a waiver of subrogation in favor of the College.
- e. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall require each subcontractor performing work under the Contract, at the subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown below. As an alternative, the Contractor may include its subcontractors as additional insureds on its own coverage as prescribed under these requirements. The Contractor's certificate of insurance shall note in such event that the subcontractors are included as additional insureds and that Contractor agrees to provide Workers' Compensation for the subcontractors and their employees. The Contractor shall obtain and monitor the certificates of insurance from each subcontractor in order to assure compliance with the insurance requirements. The Contractor must retain the certificates of insurance for the duration of the Contract plus 5 years and shall have the responsibility of enforcing these insurance requirements among its subcontractors. The College shall be entitled, upon request and without expense, to receive copies of these certificates.

Coverage shall be written on an occurrence basis, except for professional liability as may be applicable, by companies authorized and admitted to do business in the State of Texas and rated A- VII or better by A.M. Best Company or otherwise acceptable to the College as follows:

- a. Commercial General Liability Insurance. Shall be in place through any warranty period and will include Independent Contractor's liability, Elevators, Products and Completed Operations, Explosion, Collapse, Underground Hazards and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this contract, fully insuring Contractor's (or Subcontractors) liability for bodily injury and property damage with a combined bodily injury (including death) and property damage minimum limit of:

\$1,000,000 per occurrence  
 \$2,000,000 general aggregate  
 \$2,000,000 products and completed operations aggregate

- b. Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation as to the College, Employer's Liability insurance of not less than:

\$1,000,000 each accident  
\$1,000,000 disease each employee  
\$1,000,000 disease policy limit

A Waiver of Subrogation in favor of College of the Mainland with respect to injuries/illness to contractor's employees is required. A copy of the endorsement to policy must be submitted to the College ORM prior to commencement of any work or service pursuant to any contract. Non-subscribers may be required to provide proof of financial strength by providing a letter of credit from a financial institution or other such proof of financial assurance or Employer's Indemnity Insurance Policy at limits approved by the College. Self-Insured entities will be required to provide a copy of their Certificate of Authority to Self-Insure as provided by the Texas Department of Insurance, Division of Workers' Compensation; and satisfactory evidence of Excess Workers Compensation insurance as may be requested.

- c. Comprehensive Automobile Liability. Insurance covering owned, hired, and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage. Such insurance is to include coverage for loading and unloading hazards.
- d. Professional Liability Insurance (if required): The Contractor shall provide and maintain, and shall require all subcontractors to provide and maintain, insurance to cover claims for negligent acts and/or errors and/or omissions that may arise from the work performed by the ~~Design~~ professional, subcontractors, or anyone directly or indirectly employed by them. Professional Liability Insurance (Occurrence Form) or if the insurance is written on a claims-made form, shall continue for two (2) years following the completion of the performance or the attempted performance of the provisions of this agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this agreement. If the coverage is canceled or non-renewed and not replaced with another claims-made policy form with a retroactive date prior to the effective date or coinciding with the effective date of this agreement the Contractor must purchase Extended Reporting ("Tail") coverage for a minimum of two (2) years following the completion of the performance or the attempted performance of the provisions of this agreement, providing coverage in the amount of
- a. For contracts up to \$250,000 in revenue, a minimum limit of \$1,000,000 per claim/\$1,000,000 aggregate is required.
  - b. For contracts in excess of \$250,000, a minimum limit of \$2,000,000 per claim/\$2,000,000 aggregate is required.

**8. RELATIONSHIP OF THE PARTIES.** It is agreed and understood that the Contractor is an independent contractor and not an agent or employee of the College. Nothing in this Contract shall be construed to create a joint venture, partnership, association, or like relationship between the parties.

**9. TERMINATION.** The College reserves and has the right and privilege of canceling, suspending, or abandoning the execution of all or any service in connection with this Agreement at any time upon thirty (30) days written notice to the Contractor. The Contractor may terminate this

Agreement upon thirty (30) days written notice to the College should the College substantially fail to perform their obligations under the terms of this Agreement. The College's liability in case of early termination will be limited to paying for the work already performed and the expenses already incurred as of the date of the termination, less any and all foreseen or unforeseen damages sustained by the College as a result of any default or consequence of termination.

**10. SUCCESSORS AND ASSIGNS.** The College and Contractor each binds himself, and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. The Contractor shall not assign, sublet or transfer his interest in this Agreement without written consent of the College. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the College and Contractor.

**11. NOTICES.** All notices, requests, demands and other communications required hereunder shall be written and shall be deemed to have been personally delivered when deposited in a regularly maintained receptacle of the United States Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to:

**College:**

**Contractor:**

College of the Mainland  
Attn: Sonja Blinka  
Director of Purchasing  
1200 Amburn Rd.  
Texas City, Texas 77591

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

or, at any other address which may be given by either party to the other in the manner provided above.

**12. COMPLIANCE.** Contractor agrees to abide by and perform the work under this Contract in compliance with all applicable City, State of Texas and Federal laws, rules, regulations and policies. While on the premises of the College or its components, Contractor agrees to abide by the policies and procedures of the College relative to conduct on its premises.

**13. ANTI-TERRORISM CERTIFICATION AND BOYCOTT OF ISRAEL:** Vendors doing business with College of the Mainland shall certify and adhere to all Government codes regarding anti-terrorism and boycott of Israel in accordance with Texas Government Codes Chapter 2252 and Section 2270.001.

- i. A vendor considered for an awarded contract as a result of the subject RFP shall certify it and its subcontractors is not identified on the list prepared and maintained under Texas Government Code 2270.0201 as a scrutinized company, and shall further adhere to immediate notification provided to COM should the vendor or its subcontractors become listed in accordance with any of the foregoing sections (or as the Texas Government Code or Sections of the code be amended or supplemented).
- ii. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an

Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

- iii. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

**14. EDGAR CONFLICT OF INTEREST REQUIREMENTS:** In accordance with federal EDGAR requirements, 2 CFR § 318(c)(1), no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of COM may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, through COM's written procedures, COM has set a minimum amount of less than \$100 per year for items that are unsolicited and of minimal value and promotional items.

Violations of this standard by an employee will be reported to the College President's Office and addressed through COM's personnel policies. Violations of this standard by an officer or the College President shall be addressed to the **Board President and addressed through COM Board policies.**

To the extent that COM will use federal grant funds to fulfill its obligations under this Contract, Contractor acknowledges that federal funds will be used to pay for all or a portion of funds due under this Contract and that this Contract is only effective upon receipt of the Notice of Grant Award ("NOGA") by COM from the awarding agency. As such, if COM does not receive sufficient funding for the services provided in this Contract, COM may terminate this Contract without penalty or further obligation to Contractor, at any time upon written notice to Contractor.

**CFR 38.25 - A grant applicant's obligation to provide assurance:**

29 CFR 38.25 – A grant applicant's obligation to provide a written assurance.

(a). Grant applicant's obligation to provide a written assurance.

(1) Each application for financial assistance, under Title I of WIOA as defined in §38.4, must include the following assurance:

(i) As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the award of federal financial assistance:

(A) Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender

identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries on the basis of either citizenship status, or participation in any WIOA Title 1-financially assisted program or activity;

(B) Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination against qualified individuals with disabilities;

(C) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

(D) The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

(E) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

(ii) The grant applicant also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CR part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I- financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

(2) The assurance is considered incorporated by operation of the law in the grant, cooperative agreement, contract or other arrangement whereby Federal financial assistance under Title I of WIOA is made available whether it is explicitly incorporated in such document and whether there is a written agreement between the Department and the recipient, between the Department and the Governor, between the Governor and the recipient, or between recipients. The assurance also may be incorporated in such grants, cooperative agreements, contract, or other arrangements by reference.

(b) Continuing State Programs. Each Strategic Four Year State Plan submitted by a State to carry out a continuing WIOA financially assisted program or activity must provide the text of the assurance in paragraph (a)(1) of this section, as a condition to the approval of the Four-Year Plan and the extension of any WIOA Title I assistance under the Plan. The State also must certify that it has developed and maintains a Nondiscrimination Plan.

**15. TEXAS ETHICS COMMISSION:** In accordance with HB 1295 and Section 2252.908 to the Texas Government Code, public entities are required to collect a Disclosure of Interested Parties (Form 1295) before entering into a contract with a vendor that requires an action by the Board of Trustees. College of the Mainland's policy requires all contracts valued at \$50,000 or more be approved by its governing body, the Board of Trustees. **(Please note that a new filing must be completed for each awarded contract.)**

**16. VENUE.** It is mutually agreed by the parties that if litigation should arise concerning all or any part of this contract, venue shall lie in Galveston County, Texas.

